

# **Actions for Slaunder,** <sup>C<sup>t</sup></sup>

**O R,**  
**A Methodicall Collection under**  
**certain Grounds and Heads, of what**  
**words are actionable in the L A W,**  
**and what not?**

**A** Treatise of very great use and consequence to  
all men, especially in these times, wherein Actions  
for Slander are more common, and doe much more  
abound then in times past: And vvhen the malice of  
men so much encreases, well may their tongues vvant  
a Directory.

**To which is added.**

**A W A R D S O F A R B I T R E M E N T S .**

Methodised under severall Grounds and Heads, collec-  
ted out of our Year Books, and other prlvate authen-  
tick authorities; vvherein is principally shewed, vvhat  
Arbitrements are good in Law, and vvhat not.

**A** learning of no lesse use and consequence to all men,  
then the former; for that submissions to Arbitre-  
ments vv ere never more in use then in these times.  
And this learning vvell observed, vvould avoid multi-  
tudes of suits and contentions vv hich dayly arise  
through the defects of Arbitrements.

*Vvhereunto is added an exact Table.*

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**By J O. M A R C H of Grayes Inne, Barister.**

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**L O N D O N,**

Printed by *I. C.* for *Mathew Walbanck, & Ri-  
chard Best,* and are to be sold at *Grayes-  
Inne Gate.* 1648.



# ACTIONS for SLANDER

IX  
M315a

Methodical Collection under

German Grammars and History of what

words are applicable to a w

in what words

of the words and their  
all men of course in this sense, whether Adjectives  
the Slanderer's conduct, and the truth more  
does it lie in the fact, and in the effect of  
then to such conduct, and in the consequences which

*Rev. Nov. 11, 1805.*

W A R D S O F T H E E N T R Y

which is the case in the German language, collected  
and sent out by the German and French private authors  
with a history, and in a regular, and a few, which  
Athenians are, and in I have, and what not  
bearing of noble and contemptible men  
in the other, for the distinction to be made  
and is very new, and in relation to the times  
in a language, which is, and in a language  
rules of time and of nature, which is, and  
in a language, which is, and in a language

W A R D S O F T H E E N T R Y

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OR

*La*  
**A methodicall Collection**

under certain Grounds and heads,  
of what words are actionable  
in the Law, and what not?



THE first part of my  
labour, is to shew  
what words are acti-  
onable in the Law,  
and what not? In the  
prosecution of which,  
'tis not my purpose  
to run over all the cases that have bin  
adjudged, neither can I if I would; my  
intent is only to lay downe a certaine  
rule or ground, upon which to go (which  
will indeed be as a light to all Cases of  
this nature) and having done so, to fol-  
low every particuler thereof, with the  
most pertinent cases that I find ad-  
judged in the Law; which done there  
B will

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Will be very few cases of consequence hitherto adjudged omitted.

But before I enter upon this part of my labour, give me leave to premise this, that I do not undertake this work, with an intent to incourage men in giving ill and unworthy language, or to teach them a lawlesse Dialect, but (as my Lord Cooke speakes) to direct and instruct them rightly to manage that which [though but a little member] proves often the greatest good, or the greatest evill to most men. And withall to deterre men from words, which are but winde (as hee further speakes) which subject men to actions, in which dammages and costs are to bee recovered, which usually trench to the great hinderance and impoverishment of the speakers.

And in truth that which caused mee to enter upon this labour, was the frequency of these actions; for I may with confidence affirme, that they doe at this day bring as much Gryse to the Mill, if not more, then any one Branch of the Law whatsoever. And it were to bee wished (and certainly never in a better time then now) that the greatest part of

Cookel. 4  
fol. 20. b.

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them were suppressed, that words only of brangle heate and choler, might not be so much as mentioned in these high and honourable Courts of Justice. For I professe for my part, I Judge of them as a great dishonour to the Law, and the professors thereof; especially when I consider that they are used only as instruments to promote the malice, and vent the spleene of private jarres and discontents amongst men.

The Apostle calling in question the wisdom of men, for going to Law one verse 5. with another, is not to bee intended [as the learned observe upon that place] generally to condemne all legall prosecutions, because a man may without question maintaine his just rights & privileges by Law, but only to reprehend the folly of such who upon every slight and triviall occasion (like many in these contentious times) care not to intayle suite upon them and their posterity; though in Fine they docke their owne stayles without recovery: and justly may actions for wordes come within the compasse of the Apostles exprobration.

I doe not condemne all actions for words



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Words neither, for it is but equall, th<sup>t</sup> where a mans life livelihood; or reputation (which is dearer to him then the former) is much endangered by scandalous words, that in such case the offender should bee enforced by action, to ... make composition, But that a man should sue to the Law out of malice, and make the Courts of Justice maintainers of every small and vaine brabble, this seemes to me utterly unlawfull and intollerable amongst Christians.

Coke, lib. 4, f. 15. b. *I cannot but take notice of that which Wray cheife Justice, saith in Cookes 4th Booke. That though slanders and false imputations are to be repressed because that often times a verbis ad verbera per-ventum est; which I confesse tends much to the disturbance of the common peace and therefore by all meanes possible to bee prevented. Yet he saith, that the judges have resolved, that actions for scandalls should not be maintained by any strained construction or argument nor any favour extended for supportation of them. And he addes the reason of it, because they doe abound more these dayes, then in times past. and the intemperance and malice of men in*

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creases; *Et malitijis hominum est obvian-*  
*dum*; and further addes, that in our old  
bookes, actions for scandalls are very  
rare and such as are brought, are for  
words of eminent slander, and of great  
importance.

Tis true that the Law doth in some  
cases discountenance these actions, and  
therefore we have a rule, that words if  
they admit of a double construction,  
shall alwaies be taken in the best sence  
for him that speakes them (as I shall  
make evident hereafter) because usuall-  
ly they are spoken in chollar and pas-  
sion.

This I say the Law doth, where the  
words are amphibolus; but if the words  
are clearely actionable, in such case the  
Law will never ayde a man, though they  
were spoken in the distemper of passi-  
on which seemeth very hard and unrea-  
sonable.

Nay which is yet more extream, if  
councell shall but in forme the Jury of  
the quality and reputation of the Plain-  
tiffe and also make them understand if  
they be capable the true sence and mea-  
ning of the words, and the hainousnes  
of them; such words, against such a per-  
son;

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son; this inforced and prest on by eminent Councell, shall make a Jury give a hundred pounds dammages, whereas it doth not appeare to them, that the Plaintiffe by the speaking of the wordes was prejudiced one farthing, a case of very great extremity, and worthy of reliefe.

And can any man deny, but that this is a countinancing of these frivolous Actions. But give me leave Reader, and I will in a word informe you how this may be remedied: and though the malice of men cannot be stopped, yet their Actions may.

Let no words be actionable which doe appeare to have beene spoken in choller and passion, or if actionable, yet let the Plaintiffe recover no more in damage, then he can upon Oath make appeare, that he was actually damnified by the speaking of them; and if this were provided by Act in Parliament, our new bookes would bee as little infested with these frivolous actions, as the old ones are. But I cannot thus baulke that observation of that learned Chiefe Justice who ses, that in our old bookes Actions for scandals are very rare, and such as

are



are brought, are for words of eminent  
slanders and of great importance.

This must needs bee acknowledged  
to be a most exact and true observation,  
for in searching of the Books, I cannot  
find that any action for scandalous  
words was brought before E. 3. time, and  
so rare then that I finde but one in 50.  
yeares. of E. 3. and that is Sir *Thomas*  
*Setons* case of Justice for calling of him 30 Aff. f  
*Traytor, Felon; and Robber,* no frivolous 19.  
cause of action.

And I find but three Actions for 2 E. 4,  
words brought in 22. yeares of E. 4. 15. E. 4.  
and those for one and the same words, 4. 3.  
for publishing one to bee the *Pilleine* of  
I. S. a slander of no small importance,  
neither : for so long as that base and  
flavish Tenure of *Pilleinage* held; hee  
that was a *Pilleine*, was subject both in  
person and estate, to the will of his Lord  
so that he might seize all his estate reall,  
and personall, and Vassalize his person  
at his pleasure. so that he did not kill or  
mayme him.

In all the 21. yeares of H. 7. there is  
not one action that I can find brought  
for scandalous words.

And in 38. yeares of H. 8. our books  
B 4 tell

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27. H. 8.  
14. & 22.  
30. H. 8.  
br Action  
upon the  
case 104.  
28. H. 8.  
Du. fo. 119.  
fo. 112 &  
fol. 26. fo.  
171]

tell us but of five actions brought for scandalous words; two whereof were in 27. H. 8. so that I find none before that time neither. The other were in 30. H. 8. and 28. H. Dyer, And these for no trifling words, for you shall finde that one of them was for calling a man *Heretike*, another for saying a man was perjured; and the other three for calling of one *Theife*, all of which are high scandals to a mans reputation and most of them tending to the losse of life and fortunes; so that it is very true that that Reverend Cheife Justice observed, that these Actions were very rare in our old bookes, and such as were brought were for words of emminent slander, and of great importance.

But these few have now got such a numerous progeny that I feare we cannot turne over many leaves in our new bookes, but we shall finde one of these Actions. They began thus to multiply in the *Queens* time, as we find in my *Lord Coxes* 4. book, where there is no lesse then 17. adjudged cases together upon these Actions.

And you may easily judge, they did not abate in *King James* his time; for

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(if I mistake not) there is no lesse then two and twenty adjudged cases upon these actions in my LORD Hobarts Book.

And I am certaine they are not fallen in his Majesties Raigne that now is; for I my selfe have reported no lesse then three and twenty judgments upon these actions but from *Easter Tearme* in the sixteenth yeare of the King, to *Trinity Tearme* in the eighteenth.

Psa. 39.  
verse 1, 2.

Well therefore might *Wray Chiefe Justice* say that the malice of men doth more increase in these times, then in times past; and he saith, the malice of men ought to be withstood as much as may be; which I am sure the too frequent tollerating of Actions of this nature will not effect, no more then fire can be extinguished by adding fwell unto it. You have hard my advise and direction before, therefore I will here close this with one word though the tongues of men be set on fire, I know no reason wherefore the Law should be used as Bellows to blow the Coles.

It is the saying of the prophet *David*; *I will take heed to my ways; that I offend not with my tongue, I will keepe my mouth*

*mouth as it were with a Bridle.* It were happy for all men if they could make the like resolution, and keep it. But seeing that we are but men; whilst we carry this lump of flesh, and masse of corruption about us, we shall be subject to the like passions, and affections that others have been before us, and the flesh will rebell against the spirit. And therefore I have provided this Treatise upon Actions of slander, as a Bridle for all rash and inconsiderate tongues; that seeing the mischief chiefly they may the better know how to avoid it.

And here I shall lay down this as a generall rule, which I shall by the way as I goe, make good in every particular.

*That all scandalous words which touch or concerne a man in his life, Liberty, or Member, or any corporall punishment; or which scandall a man in his Office or place of Trust; or in his Calling or function by which he gaires his living; or which tend to the slandering of his Title; or his dishonour, inheritance; or to the losse of his advancement, or preferment, or any other particular damage; or lastly which charge a man to have any dangerous infectious disease*

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by Reason of which he ought to separate himselfe, or to be separated by the Law from the Society of men : all such wordes are actionable.

And first for the first part of this Rule viz. Scandalous wordes which touch or concerne a man in his life; such wordes are actionable.

If a man call another Traitor, Felon, Theefe or Murderer, an action lies for these words, because they call a mans life in question.

30 Aff. fol.  
19. 27. H. 7  
14. & 21.  
Cooke lib 4.  
fol. 16. b

So it is all one if one shall say of another that he killed or murdered I. S. or that he stole his goods, or that he poisoned him, if it appeare to be intended to be wittingly done, or the like, these wordes likewise are Actionable, as appeares by the Bookes in the margent.

Dyer, fol.  
26. f. 171  
& 236. fol  
26. Hob.  
Rep. fol. 8,  
Pl. 11. &  
247. pl.

So if one shall say of another he hath burnt my Barne with Corne, which is Felony, this likewise will beare an Action.

196.  
Cooke lib. 4  
fol. 20.

I have a report of a case in which was thus: a Servant of one Mr. Roger Brook said of one Mrs. Margaret Passy that he sent a Letter to his Master, and in the said letter willed his Master to poison his Wife Bridget Brooke, and in this case

case

case it is said that upon a Writ of Ex-  
 ror brought in the Chequer Chamber  
 Cooke, 14. it was resolved, the words were action-  
 fol. 16. b. nable, and the judgment affirmed,  
 which case I confesse I much doubt, be-  
 cause here was but beare advice and no-  
 thing appearing to be done like *Eaton*  
 case in Cook 4 Booke.

Where the Defendant said of the  
 Plantiffe that He gave his *Champion*  
*Councell* to make a Deed of gift of his  
 goods to kill him, &c. adjudged that the  
 words were not actionable, because  
 that the purpose or intent of a man  
 without act, is not punishable by the  
 Law.

Pasch. 5.  
 Jac. in the  
 Kings  
 bench.

And I conceive it will not be like the  
 case put by *Tanfield* Just. in *Harris* and  
*Hixons* case, where he saith that to say  
 of another, that he lay in wait to Rob  
 or to murder I. S. will beare an Action  
 because that he accuses him of an act viz  
 The Preparation and lying in wait  
 which is punishable by the Law; but in  
 the former case there is nothing but  
 bare advice, which is not punishable by  
 the Law.

Mich. 5.  
 Elix Dyer  
 fo. 317.  
 fol. 8.

*Hawley* brought an Action upon the  
 case against *Sydnam* for these words;

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is infected of the Robbery and Murder  
ately committed, and smels of the  
murder, adjudged that the words were  
actionable, by reason of the word in-  
fected.

One said of another thou diddest kill  
a Woman great with Child, *innuendo*  
*locum Vxorem cujusdam R. S. defuncti.*  
and ruled by the Court that the Action  
would lie, though that the woman were  
utterly incertain, because that the offence,  
and the party intended to commit it, is  
certain, and tis not like the case, where  
one said that there is one in this com-  
pany, who hath committed a murder,  
there it is incertain of whom the words  
were spoken, and cannot possibly be  
ayded by an (*innuendo*) but here the  
words are actionable without an (*in-  
nuendo*) but quære whether the Action  
would lie or no, because there is no ex-  
presse averment that the Woman was  
dead for the (*innuendo*) will not be suffi-  
cient.

Mich. 2.  
Iac. in the  
Kings  
Bench.

*Hafellwood* brought an Action against  
*Garret* for these words (amongst others  
agreed not to be actionable) whosoever  
is he that is falsest Theefe, and streng-  
est in the County of *Salop*, whatsoever  
he

Pasch. 1.  
Iac. in b.  
R. Rot.  
107.



Averment

he hath stolen, or whatsoever he hath done, *Thomas Haslewood* is falser than hee resolved that these words are actionable, with an averment that there are Felons within the County of *Salop*, but for default of such averment the Judgement being given in the Common Pleas was reversed in this Court.

Pasc. 5.  
Iac. in the  
Kings  
bench

*Stoner* brought an Action for words against *Gambel*, and declares that the Defendant *dixit de prefato*: the plaintiffe thou *innuendo*, &c. hast stolen my Goods, and upon not guilty pleaded, the Jury found for the Plaintiffe, and in arrest of judgement it was said, that

words in the Count was nought for the wordes the second are in the second person, and it is not person, alleadged that the Plaintiffe was present at the speaking of them. *Et Tota Curia contra*, for *dixit de prefato*, is as much as *Dixit ad prefatum*, for can-actionable not he say thou hast of the Plaintiffe, except that it were spoken to him? and rule was given for Judgement.

Cookelib 4  
fol. 15. b

One *Yeomans* said of *Hext*, I do not doubt but within two daies to Arrest *Hext* for suspicion of *Fellony*: adjudged that the words were Actionable because

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cause

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cause that for suspicion of Felony, hee shall be imprisoned, and his life drawne in question.

*Hill. 20 Jac.* in the Kings Bench, *Winch* came to the Barre and shewed a Libell against another in Court Christian for these words, thou art a Witch and dealest with Witchery, and diddest procure Mother *Bale* to witch the Cat-tell of *I. S.* and upon this prayed a prohibition, because that the Plaintiffe had remedy at Law, and by *Fenner and Gawdy Iustices* the others absent, and prohibition lies, because she hath remedy at Law. So that there opinion was that an action would lie at the Common Law for calling of one *Witch*.

And in one *Edwards* his case *Hill. 40 Jac.* it was said to have been three times adjudged, that to call one *Witch* would beare an action, and also that an action would lie for calling of one *Hag*; but I doubt of the latter because I take *Hag* to be a doubtfull word. But why *Witch* should not beare an action, I know no reason, being the life may be thereby drawne in question, though I know it hath been doubted.

*Hill. 4*  
Iacs in the  
Kings  
Bench:

*Hob. Rep.*  
*pa. 355.*

*Marshall* brought an action against *Steward*

*Steward* for saying the Devill appears to thee every night in the likenesse of a black man riding upon a black Horse, and thou conferrest with him, and whatsoever thou dost aske he gives it thee, and that is the reason thou hast so much money, adjudged the words were actionable. *Note Reader* that by the Statute of 10 of King *James cap. 12.* Conjurati- on or consultation with the Divell, is Felony.

Mich. 17.  
Car. in the  
Kings  
bench;

In the case of *Hawes Mich. 17.* of the King that now is, this case was put and agreed by the Judges; one said of another that he had received a *Romish Priest*, adjudged actionable, because it is Felony, he might receive a *Romish Priest* and yet not know him to be so (like the cases I have put you afterwards therefore *Quere.*

Hob. Rep.  
p. 152.

*Sir John Sydenham* against *Timothy Man Clarke* I think in my conscience that if *Sir John Sidenham* might have his will, he would kill all the Subjects in *England*, and the King too, and he a maintainer of *Papistry* and *Rebellion* Persons. These words upon a writ of Error in the *Exchequer Chamber* were adjudged actionable.

It seemes somewhat hard to say *Res- Sec. fo. 32*  
der, that words of thought or opinion b.  
only should bear an Action, as here in  
the former words. And for the latter  
words, that he is a maintainer of Re-  
bellious Persons; they are Adjective  
only, and do not import any Act of re- *Coke lib.*  
bellion in these Persons, but only an  
inclination to it, but of this more here-  
after. *fo. 192.*

If a man say of another that he doth *Co. lib.*  
like or approve of those that maintain *4. fo. 19:*  
sedition against the King. I conceive  
that these words are actionable, and se-  
dition is a violent and publike thing, of  
which he cannot but have notice.

This rule was agreed by the Judges in *Patch. 15?*  
the debate of a case in the Kings Bench, *Car. in*  
that many words (though of themselves *the Kings*  
they be not actionable) yet being equiva- *bench.*  
lent to words that are actionable, wil bear  
an Action.

And it was said by Jones Justice, that in  
Yorkshire straying of a Mare, is all  
one with Bugging of a Mare, and  
therefore he said that an Action will lie  
for these words, with an avetement  
that they tantamount to Bugging of  
a Mare. Note by his opinion in such

Averre-  
ment;

Hob. Rep.

pa; 165.

268 pl.

236. Gibs

and Gin.

kins case

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ment

Jac. in

the Kings

Bench.

Palch. 7.

Jac. in the

Kings

Bench

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case there must be an averrement of the meaning or importance of the words.

Yet my Lord Hobart hath severall cases adjudged where a man brought

& an action for *Welch* words, and did not averre what the words did import in

English, and yet judgment was given for the Plaintiff, and the Court took

information upon Oath by *Welchmen* what the words meant in English.

And in one of the cases Serjeant *John*

*Moore* then informed the Court that judgment had bin given in the Kings

Bench in the case of *Tush* upon these words *Thou art a healer of Fellons* with-

out any averrement, how the words were taken; because the Court was in-

formed and took knowledge that in some Counties it was taken for *smo-*

therer of Fellons.

The case intended by Serjeant *Moore*

was I conceive the case of *Pridham* and *Tucker* in the Kings Bench, where the

words were adjudged actionable without an averrement, and in this case

it was agreed that words may be slanderous in one County and not in another for in *Norw.* they know not what

[*healer*] signifieth, but this being in *Devon-*

*vonshire* where

where this word is used for concealment of Theeves, will be actionable.

And I take this to be generally true  
that in all cases where a mans life may be  
drawn to question by scandalous words,  
that such words are admissible.

And now I shall cite a case or two, where words spoken which touch a mans life, which are by way of interrogation, or by way of heresay or relation; or lastly by way of negation only and yet will beare an Action.

It was said at the Kings bench Barre Car. Palsch. 15,  
[which I heard and observed] that it VWords  
had bin adjudged in this Court in one spoke by  
Appletons case, that where a man said way of in-  
to another where is my peere thou stol- terrogati-  
elt from me, that these words were on.  
Actionable.

## By Way of

And *Jones Justice* then said that he remembered this case to be adjudged. *A.* said that *B.* told him that *C.* stole a horse, but he did not believe him, that these words, with an averment that *B.* did not say any such thing to *A.* were actionable.

Hill 41  
Lac. in the  
Kings

Agreeing with this case is the Lady King's Bench, in the *Morrisons case* *Widdow*; who brought an action for words against *William* *For*. It is



*Cade* Esquire, and declares that she was of good fame, &c. and that *Henry Earle of Kent* was in speech and communication with her concerning Marriage, the Defendant *premissorum non ignarus*, said these words, *Arscot* hath reported that he hath had the use of the Lady *Marrisons* body at his pleasure; *ubi revera Arscot* did never report it, and acknowledges that the Earle of Kent upon the hearing of these words increased his suit, by which she lost her advancement &c. adjudged that the words were Actionable though spoken upon the report of another; for otherwise a man might maliciously raise slanderous Reports of another, and should never be punished for it.

But in this case *Tanfield Justice* said that if it had been expressly alleged that in truth it was so reported by *Arscot*, then an action would not lye against *Cade* for saying that *Arscot* reported it, because it is true that he did so.

And *Bartley Justice* said that an action had been brought for these words, *They are no Theefe*. In which there was an averkement, which implied an affirmative, and agreed to be Actionable, and

*Appleton*

Pasch. 15  
Car. ne-  
gative  
words  
actionable



Appletons case was then agreed for Law.

A. said to I<sup>s</sup>. *hast thou been at London to change the monies thou stolest from me?* Mich. 15<sup>th</sup> Car in the Kings bench. V Words of Interrogation. In this case it was objected, that these words were not actionable, because that they are spoken only by way of interrogation, and are no direct affirmative. But Jones and Bartley Justices (the others being absent) both said that the words were actionable; for the first words, *Hast thou been at London, &c.* are the only words of interrogation, & the subsequent words, viz. *The money thou stolest from me,* is a positive affirmation; and Bartley Just. then said, that it had been often times adjudged that words of interrogation should be taken as a direct affirmation, which Jones Just. also agreed, and further said that this case had been adjudged.

One said to another, I dreamt this night, that you stole a horse, these words were adjudged actionable. And he said that if these and the like words should not bear an Action, a man might be as abusive as he pleased, & by such subtil words as these, always avoid an action. And now I will put you a case or two, where

Where words which imply an affirmative shall be actionable.

Pasch. 15.  
Car in the  
kings  
Bench.

20 to VV

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10 to 10

One said of another, he would prove he had stolen his Books. In this case the opinion of the Court was that the words were actionable, because they imply an affirmative; and are as much as if he had stolen his Books. And so I will say of another, that I will bring him before a Justice of Peace, for I will prove that he hath stolen &c. though the first words are not actionable yet the last are.

Pasch. 51

Car in the

kings

Bench.

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10 to 10

Whitacre brought an action against Lavington for these words I will prove that Whitacre is forsworne, & that ten men can justify and I could prove him perjured if I would, adjudged that the words were actionable, for that it is a great slander to be reported that it is in the power of any one to prove one perjured; and it is as direct affirmance.

It will be proved by many vehement presumptions, that Welby was a plotter and contriver of Thomas Powels death because he would not sell his Land to the said Welby. adjudged the words were actionable.

And now I have shewne you the affirmative

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firmative part, where words which touch or concerne a mans life shall be actionable. I shall now shew unto you the negative part, where word in such case shall not be actionable.

*Words that touch or concern a mans life may not be actionable in these cases: Where they are too general, or not positively affirmative; or of a double or indifferent meaning, or doubtfull in sense; or for that they are uncertaine in themselves; or the person of whom they are spoken; or else by reason of the subsequent qualification of the words, or because they do not import an act, but an intent, or inclination only to it; or for that they are impossible, or lastly, because it doth appear that the speaking of them could be no damage to the plaintiffe; in all these cases the words will not be actionable.*

*And first, Words that are too general, or not positively affirmative, will not be actionable.*

To say of a man that he deserves to be hanged; adjudged not actionable, because they are too generall, for that hee doth not shew any thing that hee hath done to deserve it: and by *Tolberton Justice*, he may deserve it for unnatu-

*Mich. 4.  
Jac. in the  
Kings  
bench.*

shall using of his parents, and the like where he shall not be punished by the Law.

*Croke, lib. 4. f. 15. b. Yeomans and Hexts case, for my ground in Allerton Hext seeks my life, adjudged not actionable, because seeking his life is too generall, for which there is no punishment.*

*Pafch. 7. Iac. in the Kings Bench;*

So if I say of another that it is in my power to hang him, adjudged not actionable, in *Priddham and Tuckers* case, cited before, because the words are too generall.

*Hob: Rep. p. 247. Pl. 196;*

*James Steward* brought an action against *Bishop* for saying of him, that he was in *Warwick Goale* for stealing of a Mare and other Beasts, and adjudged, that the words would not bear an action because they doe affirme directly that he did steal them; as if he had said that he stole them, and was in *Goale* for it, but only make report of his imprisonment and the supposed reason of it, and it may very well be, that the Warrant of *Mittimus* was for stealing expressly, as is the common forme of making of the Kalender of the Prisoners for the Justices of Assise, and the like.

George

*George*  
*A.B.*  
*Felon*  
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*Felon*  
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*Brisco*  
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onable

George Bland brought an Action against A.B. for saying that he was indicted for Felony at such a Sessions; it was said, that it was questioned, whether an action would lie, because an Indictment is but a surmise. But I conceive that it is without question, that no action will lie in such case; because that to say a man was indicted of Felony, is no more then to say he was impeached or accused for Felony, which an honest man may be; and is no positive affirmation that hee had committed Felony, and so it hath been often adjudged, I will only cite one case in the point.

Hasselwood brought an Action against Garret for these words; *I can find in this Parish a false knave then Briscoe is, the which Briscoe is indicted of Felony & burglary, and is gone to Stafford Goale; and that false knave is Thomas Hasselwood, &c.* it was adjudged that these words are not actionable, because that Briscoe might be indicted, and yet be an honest man.

Thou hast layen in Fullers Tubbe, in which none come, but those that have the Pax, adjudged the words were not actionable, because this is no direct affirmation

Hob. Rep. p. 309. pl. 289.

19. 80. 89.

Pasch. 1. lac. in the Kings bench. Rot. 107.

37. Eliz. Chappell and Burroughes case.

Hob<sup>2</sup> Rep.  
p. 425. pl.  
381.

tion that the Plaintiff had the Pox.  
*Poland brought an Action against Ma-  
son for saying, I charge him (meaning  
the plaintiff) with Felony, &c. adjud-  
ged the words were not actionable, be-  
cause that he doth not affirm that he  
is a Felon, but doth only say, that he  
doth charge him with Felony, which  
he may do in some cases, though he did  
not the fact, as if a Felony were done,  
& the common fame were, that he did  
it, any one that suspects him may  
charge him with it.*

Hob. Rep.  
p. 308. pl.  
286.

*Henry brought an Action against  
Fitch for these words; I arrest you for  
Felony: agreed that the words were not  
actionable; for this is no positive  
charge that he was a Felon, & this may  
be lawfully done upon a common fame  
as is said before; thus you see that  
words that are not directly affirmative  
will not bear an Action.*

Yet you may see before fol. 7. where  
words which imply an affirmative on-  
ly shall be actionable, as to say, that I  
will prove that you stole my Books, or  
the like, but of this sufficient.

fol. 101.  
b & 111a

Secondly, *Words that are of a double  
or indifferent meaning, the Law wil take*



in the best sense for the speaker; and so  
adjudged them actionable, for the rule of  
Law is (as I have said before) that  
*verba accipienda sunt in mitiori sensu.*  
In *Tecmans and Herets* case cited before,  
for my land in *Allerton*, *Hext* seeks my  
life, &c. adjudged these words were  
not actionable, because he may seek his  
life lawfully upon just cause; and his  
land may be stolen of him, and so in  
*mitiori sensu.*

*Birham* brought an action upon the  
case against *Netherfall*, and the words  
were Master *Birham* did burne my barn  
(*innuendo a barnu with Corne with his  
owne hands, and none but he:* and after  
verdict it was moved in arrest of judg-  
ment that the words were not action-  
able, for it is not felony to burn a barn  
if it be not parcel of a Manton house,  
nor full of Corne; And in such case a-  
giter civiliter, and not criminaliter:  
and words must be taken in *mitiori  
sensu*; and the *innuendo* will not serve  
when the words themselves are not  
slandereous.

leaves his case, hang him he is full of the  
Fox, I marvelle that you will eat or  
drink with him &c. adjudged that the  
words

Cooke l. 4.  
fol. 15. b.

Cooke l. 4.  
fol. 20. a.

Cooke l. 4.

fol. 17.



words were not actionable, because they shall be taken in *imitiori sensu*, for the small Pox, & not the French Pox.

Mich. 201  
Jac. in the  
Kings  
bench.

But note that in *Hawery and Miles* case cited afterwards, it was said by *Fenner Just*: that to say, that a man is laid of the Pox, will bear an Action, because that is the phrase for the French Pox.

Hob. Rep.  
p. 106. pl.  
97.

*Adrian Coote* brought an Action against *Adrian Gilbert* for these words, *Thou art a Thiefe, and hast stolen a Tree*, adjudged that the words were not actionable, and agreed that there is no difference between, *and thou hast stolen* and *for thou hast stolen*; for in common acceptation (and) is to be understood to be but a verilying and making good of the generall word (*Theefe*) and then a Tree shall be understood rather of a Tree standing, then felled; which cannot be no Felony or Theft; for that a man cannot steal a mans inheritance.

Hob. Rep.  
p. 473. pl.  
406.

So *Clarke* brought an Action against *Gilbert* for these words; *thou art Theefe and hast stolen twenty load of my Furze*, adjudged that the Action would not lie for the reasons given in the former case:

The

The like Law is, if a man say of ano-  
ther that he hath stolen his Apples, or  
his Corne, or robbed his Hoppe ground,  
or the like, the Law in these cases will  
adjudge them rather growing, then ga-  
thered or cut down, and so the words  
not Actionable.

Thus it is evident, that where the  
words may be taken in a double or an  
indifferent meaning that the Law will  
ever take them best for the Speaker. I  
shall onely put one case more upon this  
ground, and so passe it over.

*Pawlin* brought an Action against  
*Ford* for these words, thou art a Thee-  
vill roge, and hast stolen my Wood.  
It was in this case said at Barre the  
Action would not lie, because it should  
be construed rather to be wood stan-  
ding then cut down, like those cases  
put before.

But *Bramston* chiefe Justice seemed to  
opine that the words were actionable,  
because that [wood] cannot be other-  
wise intaded then of Wood cut down  
according to the old verse; *Arbor domi*  
*crefcit, lignum domi crefcere nescit*, and  
so it was adjourned without more say-  
ing.

Cooklib.  
4. fo 19. b.

Trin, 181  
Car. in the  
Kings  
bench.

Note

# *Actions for Slander.*

Triq. 4.  
 Jac. in the  
 Kings  
 bench  
 Rot. 13 66

V Words  
 must be  
 ask n ac-  
 cordin to  
 common  
 intent

187. 1017  
 1017. 1017  
 1017. 1017  
 1017. 1017

Note Reader, according to the opinion of Bramston Chief Justice, betwixt *Tanfield* and *Saunders* for the same words, he hath stolen my wood, to which the defendant demurred, it was adjudged that the action would lie for *Tanfield* Justice said that the words shall be intended according to the most usual sense, viz. That it was *Lignum* and not *Arbor*, as if one say that the plaintiff hath committed a murder, it shall not be intended that he hath murdered a Hare, but a man.

You may here observe (Reader) that though the words of a double or indifferents meaning ought not to be taken in the best intention for the speaker, as I have sufficiently declared if note you, yet they ought not to be taken contrary to common intention.

For as you shall not straine words to an intent not apparent, to make them actionable, so you must not wrest them contrary to common intent to make them nonactionable this is apparent by *Saunders* his case immediately before where it is adjudged that to say of another that you have stolen my wood shall be intended to be *Lignum*, and not *Arbor*.

and in any

and so actionable, to say of a man that  
he hath committed a murder, shall not  
be understood murdering of a Hare but  
of a Man.

Dame *Morrison* brought an action  
against *William Cade* Esquire and declar-  
ed that she was of good fame, &c. and  
that *Henry Earle of Kent* was in speech  
and communication with her for mari-  
age, the defendant *premissum non igitur*

said these words *Arscot* hath re-  
ported that he hath had the use of the  
Lady *Morrison's* body at his pleasures  
& *Arscot* never reported it. And  
further alledges that the E. of *Kent* upon  
the hearing of these words succeeded  
his suit by which she lost her advan-  
cement, the Defendant pleaded not guilty,  
and it was found for the Plaintiff.

It was moved by *Hobart Attorney Genl*  
that the words were not action-  
able for this reason [amongst others]  
all ruled against him] because that the  
words had the use of her Body were  
of a double intendment,  
and therefore should be taken in the  
best sence, to have the use of her body  
as a Taylor in measuring, or a Phisit-  
an in giving Physick or the like, & not  
in any worse sence.

But

2broVV  
-22 1113  
guilt  
1011  
Hill  
lac. in the  
Kngs  
Bench  
Rot. 1153

121 111  
Hill  
10 11 11  
8

111 111  
11 11  
11 11  
11 11  
11 11

Words  
taken ac-  
cording  
unto  
common  
intent.

But by Popburn chiefe Justice the words are actionable, when words are spoken that may have a double intent or meaning, they shall be expounded according to common intent, for otherwise, he which intends to slander another, may speak slanderous words which by common intendment shall be expounded a slander, & yet no Action lie. And here the words hath had the use of her body at his pleasure, shall not be intended in any lawfull manner, but licentiously and dishonestly; for this the common intent, with whom all the other Justices agreed.

Mich 15!  
Bliz. Dyer  
fo. 317 pl.  
8.

Thirdly, where the words are doubtful in sense or meaning, there likewise shall not be actionable.

Hob. Rep.  
pa. 350.  
pl. 323  
Coke lib.  
4. 15. b.

To say that a man smells of a murder lately committed, will not bear Action, because the words are of a dubious sense and intendment. *Bradshaw* brought an Action against *Walker* for these words; thou art a filching fellow, and diddest filch from *William Parson* a 100. It was judged the words were not actionable, because that they are of uncertaine sense and meaning.

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So to call one Harlot will not beare an action. And upon this ground I conceive (as I have said before) that to call a Woman *Hagge* will not be actionable.

So to say of a man that he is a *Healer of Felons*, or that he strained a Mare, as the cases are before put, will not be actionable, because of their doubtfull sence and meaning, without the words be spoken to such who knowes the meaning and intendment of them.

*Fourthly, Where the words themselves are incertaine, or the persons of whom they are spoken, in such case they will not be Actionable.*

And first for the incertainty of the words; that is, when the scandall is not certaine and apparent in the words themselves.

ve. fo. 3.  
fo. 9.

Note Reader that all the cases put before upon the double or indifferent meaning of words are apt to this purpose, As those thou hast stollen my Apples, or my Corne, or so many load of my furrer, or a Tree, or the like, the words in these cases are not Actionable, because the scandall is not apparent and certaine by the words; for in every of these cases, [for ought appears by the



words of the thing said to bee stolen might be growing, and then it is a trespass onely, and no felony, and to charge a man with a trespass, will not be actionable.

But if the words were, thou hast stolen my Apples out of my Loft, my Corn out of my Barne, or my Furze or Wood out of my Yard, in such case the words would be actionable, because the scandall is apparent, for that it is evident by the words, they were not growing.

Nob. Rep.  
pag. 8. pl.  
11.

*Edward Miles* brought an Action against *Francis Jacob* for these words thou hast poysoyned *Smith &c.* upon Writ of Error in the Chequer Chamber it was adjudged, that the Action would not lie, because it did not appeare by the words that it was done wittingly.

Nob : Rep.  
p. 268. pl.  
236.

*Gibs* and *Jenkins* case to say of a man that he boare away money, or the like will not be actionable.

Mich. 15.  
Car in the  
Kings  
bench.

*A.* said of *B.* that he took away money from him with a strong hand, for which, *B.* brought an action, adjudged that it would not lie.

*Bransford* choise Justice in the assigning of *Hames* Case, Mich. 17. of the



King in the Kings Bench, remembered this case; he did assault me and tooke away my purse from me; and he said that it was adjudged that the words were not actionable. The reason of these cases, is because that for ought appears by the words (which are of themselves uncertain) these might be Treppasses only, and no Felony.

37. Eliz.  
in the  
Common  
Plea.

*Againe, where the person scandalized is uncertain, no action will lie.*

If one say (without any precedent communication of any person uncertain) that one of the Servants of B. (he having divers) is a notorious Felon or Traytor, &c. here for the uncertainty of the person no action lyer; neither can it be made good by an innuendo.)

Coke lib.  
4. fo. 17. b.

So, if one say generally I know one neere about B. that is a notorious thief, or the like, no action will lie, for the same reason.

CoKe lib.

So as it is in *Flewelers* case in *Hobart's Reports*; if a man say, looking upon three persons, one of these murdered a man, no action will lie for these words by reason of the uncertainty of the person, neither can an innuendo help.

Hob. Rep.  
pa. 375.  
pl. 351.

to helpe the uncertainty; and note Re-  
 der that these cases are not like, *Wife-*  
*man's Case.*

*Wifeman of Grayes-Inne*, brought an  
 Action against *Wifeman of Lincolns-*  
*Inne* his Brother for these words, my  
 Brother (meaning the plaintiffe) is per-  
 jured, and I will justifie it, upon not  
 guilty pleaded, it was found for the  
 Plaintiffe, and it was moved in arrest of  
 judgment that the words were not  
 certaine enough to ground an Action  
 upon, because the Plaintiffe might have  
 more Brothers, and it doth not appeare  
 of which of them the words were spo-  
 ken, but it was resolved that the action  
 would well lie, because it is alledged  
 that they were spoken of the Plaintiff,  
 and the Jury have found accordingly;  
 and here *Tanfield Justice* took his dif-  
 ference; where the words themselves  
 are incertain, as to say, one of my Bro-  
 thers is perjured, there they can never  
 be made good by an averment, but  
 where the words are certaine, in them-  
 selves, so that it may appeare, that the  
 Speaker intended a person certaine,  
 there may be made certaine by such a  
 Declaration, and the finding of the  
 Jury.

And

Mick 32  
 in the  
 Kings  
 Bench.

And it was said that if it were true that there were diverse Brothers, the Defendant should have pleaded it, and then issue should have been taken, whether the words were spoken of the Plaintiff or no.

Nor are the former cases like a case which I cited before, *Mich. 2. Jac. in the Kings bench*, where an action was brought for these words; thou diddest kill a Woman great with Child, [*inwendo, Incosum uxorem cujusdam R. & defuncti*] where it was ruled that though the Woman were utterly incertain yet because the Offence and the party intended to commit it were certaine, the action would well lie.

*Mich. 2. Jac. in the Kings bench*

*Foxcroft* brought an action against *Lacy*, & declared that a communication was moved between *John Walter*, and *Richard Guyn*, Esquiers concerning a certaine suit, wherein the Plaintiff and certaine others were Defendants, and that the Defendant *Lacy* upon the said communication in their presence, spake these words; these Defendants (meaning the Plaintiffe, and the others) are those that helped to murder *Henry Parran* (meaning one

*Hob. Rep. pa. 122. pl. 116.*

*V Words certain by relation*

Hen. Farret deceased) who was murdered by one T. Galsfield, who was hanged for it, adjudged the words were actionable, and that they were as sufficiently laid to incite every of the defendants to a severall Action, as if they had been specially named; here you see the words may be sufficiently certain by relation,

Fifthly, where former words actionable are qualified with subsequent words not actionable; there though the former words spoken generally, and by themselves would have maintained an Action; yet now, taking altogether, they will not be actionable.

Thou art a Theefe, for thou hast stolen my Apples out of my Orchard; or for thou hast robbed my Hopground; or, for thou hast stolen a Tree; or for thou hast stolen my Furzes; as I have put you the cases before, Or, thou art a Theefe, and thou hast stolen my apples out of my Orchard; or, and thou hast robbed my Hopground; &c. [and] and [for] have both one & the same signification in these cases, as I have elected is to you before to be adjudged; &c. in all these cases no Action will lie.

For word form but t have that will for u Hop Trepr them you char as the By these old k Siske and word them an A enter they word did n for it pray thei

For [as I have said before] the latter words do qualifie the former, for the former words say him to be a Theefe, but the latter prove him to be none. I have given the reason before, because that in all these cases, the Law which will alwayes construe words the best for the Speaker, will take the Apples, Hops, &c. to be growing, and then it is Trepassie to take and not Felony to take them away, because felony as I have told you before) cannot be committed of that which is part of an mans inheritance as these are whilst they are growing.

*Britteridge* brought an Action for Cakes libel these words; *Britteridge* is a perjured old knave, and that is to be proved by a Stake parting the land of *H. Martin*, and *M. Wright*, adjudged that the words are not actionable, because though the former words would bear an Action, the latter do so qualifie and extenuate them, that taking altogether they are not actionable, for the latter words do explain his intent, that hee did not intend any iudiciall periury; also it was impossible that a Stake could prove him perjured, and therefore for the impossibility, and insensibility for

libel 200  
4. fo. 19. a

b.

libel 200

the words [the Action] would not lye.

Sixely, where she would doe not import an Act, but an inclination only, or an inclination to it, there such words [except where they scandal a man in his function or profession] will not be an Action.

Coke lib.

4. fo. 19, a

b

If a man say of another that he is a seditious knave, or a thersish knave; or a traiterous knave; these words will not bear an Action; because that the words do not import that he hath done, or is guilty of Sedition, Felony, or Treason; but are Adjective words, which import an inclination to it only.

But if a man say of another that hee is a perjured knave, an Action will lye for these words, because that the Adjective [perjured] presumeth an Act committed, or otherwise he cannot be perjured.

Coke ibi.

Besides, Adjective words will be an Action, when they scandal a man in his Office, Function or Trade, by which he doth acquire his living, though they doe not import an Act done.

My Lord Coke cites this case adjudged 24. Eliz. between Philips Parson of D. and Badby, in an action brought for these words, thou hast

made

to sedition, and moved the people  
to sedition this day resolved that the  
words were actionable, notwithstanding  
that the first part of the words were  
uttered in a private and the last words  
were but a motive to sedition; and it  
doth not appear that any thing en-  
sued; yet because that they scandal the  
Plaintiff in his Function, they were ad-  
judged actionable.

So, if a man say of a Merchant, that  
he is a Bankrupt Knave, or a Bank-  
rupt Knave, these words will bear an  
action, though that the Bankrupt bee  
an adjective.

Or if one say of a Merchant, that he  
will be Bankrupt within two days, which  
imports but an inclination, yet an ac-  
tion will lie, for these scandal reach to  
the profession.

So if a man say of an Officer or  
Judge, that he is a corrupt Officer or  
Judge, though the words be adjective,  
yet an action lyeth for both causes; first  
because the words touch him in his Of-  
fice, and then because they do import  
an accusation.

As *Hob. Rep. pag. 12. pl. 17. Wardly and  
Ellis case*, to say of an Attorney, that  
he

*Mich. 437  
444. Eliz  
in the  
common  
Pleas.*

*Mistake  
case!  
6. E. 61  
Dyer, f. 72.*

*Cook, Hb.  
4. fol. 16.  
a & 19. a*



he is a bribing knave, will bear an action, though the words be adjective.

Words likewise that import an intention, will not bear an action.

Coke lib.  
4. fo: 16:  
b. Eatons  
case.

The defendant said of the plaintiff, *he is a brabler & a quarreller* he gave his Champion counsell to make a deed of gift of his goods to kill me, &c. but God preserved me; The book saith, that it was strongly urged, that the action should be maintainable, and divers cases cited, which I will remember unto you.

Mic. 32, &  
33. Eliz.  
in the  
Kings  
bench.

My Lady Cooke's case for these words; *My Lady Cooke offered to give poison to one to kill the Child in his bed.*

Another betwixt Tihors and Helyn in Gloucester for these words: *Tihors and another did agree to hit one to kill B.*

Also Cardinals case for these words: *if I had consented to Master Cardinall T. H. had not been alive.*

And the Lord Lumleys case; *My Lord Lumley hath gone about to take away my life, against all Christian dealing.*

But notwithstanding these cases, the book saith, that upon great deliberation and advisement, it was adjudged, that in the principall case the words

were

were non actionable, because that the purpose or intent of a man without act is not punishable by the Law. My Lord Cooke in the close of this case, sayes Note well this case, and the cause, and reason of the judgment.

Certainly reader there is somewhat more then ordinary in this (*Nata bene*) of my Lord Cooke; and the reason of the case seems to intimate as much unto us, which is, that the purpose or intent of a man, without act, is not punishable by the law, which is a certain truth.

But I conceive it is as true, that where that purpose or intent is manifested by an over act or attempt, that that is punishable.

Mich. 4. of King James in a case in the Kings Bench, this was agreed for law; to say of a man, that he lay in wait to assault J. S. with an intent to robbe him, or to murder him, an action lyes, because that he doth accuse him of an act, viz, the preparation and lying in waite to assault him; but if he had said that he would have murdered or would have robbed J. S. an action would not lye, because he only guesses at his imagination.

And

Mich. 4.  
Jac in the  
Kings  
bench.

Pasch. 5.  
Iac. in the  
Kings  
bench

And in *Harris* and *Dirabscott* in the Kings Bench that case was allowed by *Tinsfeld Justice*, where he said that if one lay in wait for another, that he is in wait to murder. I. Such an action is because such lying in wait is punishable by the law.

By this case it should seeme that to charge a man with an attempt only to commit Felonies, to say of a man that he offered to rob, or to payson, or to murder. I. Such a charge should be actionable, for I thinke the like punishment is in these cases, as in the former which I conceive is only the good behaviour, or at most indictable for the same and thereupon fined.

And if an action should lie in such a case, by the same reason, no say of a man, that he is a common Quittell, a breaker, or perturber of the Peace, or that he is a Riotter or the like would be an action, because that for the likewise the good behaviour is granted, and likewise a man may be indicted for them, therefore quare of the former cases. And likewise, words which are apparently impossible, will not be actionable.

Edw.

Donarigam Bens

Pash. 5,  
Iac. in the  
Kings  
bench.

Benfusen brought an action against Mor-  
for these words; *Thou hast robbed*  
*the Church* (*innendo Ecclesiam sic Al-*  
*legi extra* (replegate London) and hast  
stolen *The Lence of the Church*; Upon  
not guilty pleaded it was found for the  
plaintiff, and it was moved in arrest of  
judgment, that the words were not  
actionable, because the Church shall  
be intended the Univerfall Church, and  
not any materiall Church, and the  
Church Militant cannot bee robbed,  
so the words are impossible, but by  
opham chiefe Justice, and Tanfield  
Justice, the action will well lie, and so  
was adjudged, because the words in  
this case cannot be intended of an in-  
visible Church, as is objected, but of a  
materiall Church, as is explained by  
the subsequent words; *and hast stolen*  
*the Lence of the Church*; which cannot  
be understood of the invisible  
Church; In this case Reader you may observe  
that it is admitted, that to say of a man  
*he hath robbed the Church*, gene-  
rally will not be actionable; because  
it shal be understood of the invi-  
sible Univerfall Church, and so the  
words

words impossible, because that cannot be robbed.

So I conceive to say of a man, that he hath robbed a Church will be actionable, because this must of necessity be understood of some particuler materiall Church.

*Mish. 15.  
Car. in the  
Kings  
bench.*

*Dickes* a Brewer brought an action against *Fenne* for these words; I will give a peck of Ale to my Mare, and I will leade her to the water to drinke, and she shall pisse as good beere as *Dikes* do brew; adjudged the words were actionable, because impossible, and therefore they could be no scandal to the Plaintiffe.

*Coke lib.  
4. l. 19. c.  
b.*

*Britteridge* brought an action for these words, *Britteridge* is a perjur'd old Knave, and that is to be proved by a stake passing the land of *H. Martin*, *M. Wright*, adjudged the words were not actionable because that it was impossible that a stake could perjure him periured.

Lastly, where it doth appear that speaking of the words could be no damage to the plaintiffe, there likewise no action will lye.

*Rook, 1. 4.  
fol. 16. 3*

The Plaintiffe shewes in his Com-

that the defendant hath a wife yet in life, and that the defendant said of the plaintiff: *Thou hast killed my Wife*; adjudged that the words were not actionable, because that it doth appear by the Plaintiffs Declaration, that the Wife of the Defendant was in life, so that by these words the Plaintiffs could not be in any jeopardy nor scandalized, nor damaged by them.

The like case was put in *fit Thomas Holt and Taylors case Pasch. 5. of King James*; if one say of a woman, *That she hath murdered her husband*; and shee and her husband bring the action; it will not lye, because it doth appear by the record, that the slander is not prejudiciall.

*Pasch. 5. Jac. in the Kings bench.*

And as when it doth appear by the record that the speaking of the words could be no damage to the plaintiffe, no action will lye. So where the speaking of the words might be a damage to the plaintiffe, yet if the ground of that damnification doe not sufficiently appear by the record, the action will not lye.

A. Brought an action against B. for saying, *That hee kept false wasts by which he did consen*; &c. and declared

*Mich. 17. Car. in the common that Plea.*



that hee gained his living by buying and selling, but did not shew of what profession he was; adjudged that the action would not lye, because it cannot appear (without shewing of his profession) that the speaking of the words could be any damage to the Plaintiff.

**Trin 17.** *A. Brought an action against B. for these words; Thou hast killed my brother* [ *innuendo* *fratrem* ] *adjudged that the words were not actionable, because the Plaintiff did not averre, that he was dead at the time when the words were spoken, and if he were living then the speaking of the words could be no slander or damage to the Plaintiff.*

**Hob. Rep.** *So where a man brings an Action for words or the like, which are scandalous, and doth not averre, or set forth that they were spoken to one who understood the meaning of them, the action will not lye, because it doth not appear by the Record, that the speaking of the words could be any damage to the Plaintiff. For if they were spoken to one that did not understand the meaning of them, no action would*



*Actions for Slander.*

35

lie, because they could bee no scandall to the Plaintiffe.

And now I shall adde to the rest, only this one ground where words shall not bee actionable, and that is in this case.

*When a man is charged with a crime or offence by scandalous words, where it doth not appeare by the words, that he had notice or knowledge of the ground or occasion of the crime or offence, in such case no action will lie for such words.*

Bridges brought an action for those words, he (*præfat Bridges innuendo*) is a maintainer of Theeves, and hee keepeth none but Theeves in his house, and I will prove it, upon a writ of Errour in the Chequer Chamber, it was holden the words were not actionable, because he might maintaine Theeves without notice, and therefore the first Judgement was reversed.

Like the case in my Lord Hobartts booke, where an action was brought against another, for saying that the Plaintiffe kept men which did robbe on the Highway, adjudged that the words would not beare an action, because that hee might keepe them, and

E

not

Mich 10, & not know them to be such persons.

41. of the  
Queen in  
the Com-  
mon Pleas

In the case of *Reade* and *Sauls* which was Mich. 40. & 41. of the Queen this case was remembered by *Wormesley Justice*, a man brought an action in the Court for these words, he (meaning the Plaintiffs) is a receiver of Theeves, and he said that in this case the Plaintiffs could have no judgment, because that he might receive Theeves, and yet not know them to be so.

Mich 27.  
Car. In the  
Common  
Pleas.

*A.* said of *B.* that he kept false waites for which *B.* brought his action; and judged that the action would not ly because that it did not appeare that he did use them; and besides, for that he might keepe false waites, and not know them to be so.

Hob. Rep.  
pa. 8 pl. 11.

The case of *Atiles* and *Jacob* cited before is likewise to this purpose, where an action was brought for these words, thou hast poysoned *Smith*, adjudged that the words would not beare an action, because that it did not appeare that he did it wittingly.

Coke lib.  
4. fo. 15.

*Stanhop* brought an action against *Blith* for these words; Mr. *Stanhop* hath but one Mannor, and that he hath gotten by swearing and forswearing, resolved

that the words were not actionable, for this reason (amongst others) for that he might recover or obtaine a Mannor, by swearing and forswearing, and yet he not procuring or assenting to it.

And now I am come to the second part or clause of that generall rule layed downe before, where I am to shew you,

*That scandalous words which touch or concerne a man in his libertie will beare an Action.*

By the Bookes in the Margent the Law is plaine, that if I publish and claime B. to be my Villaine, that in such case no action will lie, because I my selfe claime an interest in him, and the Law will not in such case punish a man; for then no man durst claime his owne for feare of an Action.

But upon these Bookes I conceiving the Law is evident, that if a man had published another to be the Villain of N. that in such case an action would have layne, because these words tend to the enslaving of him and his posterity, and to the utter deprivation of his Liberty, which the Law so much favours; for, as it is well knowne, he that was a

2. E. 4. 5.  
15 E. 4. 32  
17. E. 4. 36  
13. N. 76  
Kiliway  
10. 25. b.  
27. 24.

Villaine, he was subject both in person and estate to the will of the Lord, so that hee might seize all his Estate real and personall and vassalise his person at pleasure, so that he did not kill or maim him.

But I conceive that at this day an action in such case will not lye, because that time and inconvenience hath quite abolished and worne out this Bondage: our Books have little upon this ground therefore I shall thus passe it over.

Scandalous words which touch or concern a man in Member, or in any corporal punishment, will beare an Action.

A man brought an action for calling him Theefe, and that hee had stolen a Sheepe from B. the Defendant justified the calling of him Theefe, for that the Plaintiffe did steale the Sheepe and it was good by the whole Court, without expressing the value of the Sheepe, for they be not worth twelve pence, so that it is but petty Larcery, and not capitall yet it is Felony in its nature.

By this it is evident, that to say a man hath stolen six pence from B. will beare an action, though it be but petty Larcery, because the Offender by Law

Rob. Rep.  
pag. 258.  
Male and  
Ret's case,  
& 27. H. 8  
22.

may be imprisoned and whipt for it.

If a man say of another that he is perjured or that hee hath forsworne himselfe in such a Court, an action will lie for these words. For by the Statute of 5. Eliz. cap. 9. A man convict of perjury forfeits 20. l. and is to have sixe moneths imprisonment, and his testimony taken away while that conviction stands; and if hee have not Goods and Chattels to the value of 20. l. then hee is to be put in the Pillary, and his Eares to be nayled, so that you see here is an immediate corporall punishment given by this Statute, which is imprisonment.

And if a man say of another that he can prove him perjured, an action will lie, though it be but an implied affirmative.

*Hearle against Tresham*, thou hast taken a false Oath in the Sessions of, &c. resolved the words were actionable, for the Court shall intend this to bee a Court of Record, as Records of which they ought to take consfance.

*Adams against Flemming*, he hath forsworn himselfe before the Counsell of the Marches of Wales in the suit I had

Cook lib.  
fol. 15. &c.  
19. Br.  
Action upon the case  
104. Hob.  
Rep. pa.  
114. pl. 107

Sec fo. 7. 2  
b

Hil. 1.  
lac. in the  
Kings  
bench.

Hob. Rep.  
pa. 396.  
pl. 360.

against him there for perjury; adjudged  
actionable.

In *Lelieke* and *Wrinckemores* case  
*Mich. 7.* of King James in the King  
34<sup>th</sup> of the Bench, one *Coffmans* Case was cited  
Queene which was thus, thou wast forsworne  
*Coffmans* in such a Bishops Court, it was said upon  
case, that these words were adjudged actions  
*Mich. 42.* of the Queen Arrest of Judgment for the  
42<sup>nd</sup> of the Queen words, thou art a forsworne knave, then  
in the Common Pleas, wast forsworne in *Ilcon* Court (*innuendo*,  
the Court *Leete* there holden) it was agreed that the  
*Mich. 42.* of the Queen should not stretch the words further  
42<sup>nd</sup> of the Queen then they were spoken: And *Williams*  
Common Pleas, *ams* put this case, which was in the  
Kings bench, thou art a forsworne man  
thou wert forsworne in White Church  
Court, which was affirmed by all the  
Serjeants to be adjudged not actionable

*Coke lib. 4*  
*fo. 15. b.*  
Yet quære  
whether  
the Judges  
can intend  
this a  
Court of  
Record.

Which case I conceive, cannot be  
Law, because it is adjudged (as I have not put  
the case before) that if one say of another that he hath forsworne himself  
in such a Court, that the words are actionable, and in this case judgment  
given accordingly.

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*Actions for Slander.*

Judge. If a man say of a Woman that shee is a Bastard, an action will lie for these words, because that shee is punishable by the Statute of 18. of the Queen; cap. 11. es case, cited at the discretion of the Iustices, who always inflict a corporall punishment as upon them, as imprisonment, whipping, or the like.

Court. *Morgan and Rookes case.* Morgan said of the Wife of Rookes she is a Bawde, and keeps a Bawdy house, adjudged that the words were actionable upon a writ of Error brought by Morgan, to reverse the judgment given in the Common Pleas, and judgement was affirmed.

*Chambers and his Wife against Ryley* Trin. 18. in the for the same words; Chambers his wife Car in the ne man is a Bawd, and keeps a Bawdy house, Kings Church. Adjudged the words were Actionable Bench. all the, and in this case it was agreed, that ionable to say of a Woman she is a Bawde, will not be an action; because shee is not punishable by the Law for it, but to say of her that shee keeps a Bawdy house will be Actionable, for that shee is punishable by the Law for keeping a house of Bawdry.

A Prohibition was prayed, because



Hil 24.

Jac. in the  
Kings  
Bench.

that *Elizabeth Thorne* had Libelled in Court Christian against *Turnam* for defamation for these words, *thou art a Bawde and dost keep a bawdy house*; and it was granted by the whole Court because that an action lyes at Common Law for these words.

The reason why an action lyes in these cases, is, because the party may be indicted for keeping of a Bawdy house and if shee bee thereupon convicted shee shall bee imprisoned and most ignominiously Carted, which are corporall punishments.

If a man say of another that hee hath forged a Lease, Obligation, Release, Acquittance, or the like, an action will lye for these words: Because that by the Statute of 5. of the Queen cap. 14. there are great and grievous corporall punishments inflicted upon such offenders, if it bee to disturbe a Tittle the punishment is the greater, but onely in the cases aforesaid; the Offender is to bee put in the Pillory, one of his Eares to bee cut off, and to bee imprisoned for a year.

Mic 17.  
Car. in  
the Kings  
Bench.

*Hawes* brought an action for these words; my Cousen *Hawes* hath spoken  
against

led against the Booke of Common Prayer,  
and said it is not fit to bee read in the  
Church. *Heath Justice* was of opinion  
that the words were actionable, though  
the offence bee onely against a penall  
law, for the Statute of 1. of the *Queen*  
cap. 2. gives a penalty onely for speak-  
ing against the Booke of Common  
Prayer; but in default of payment  
thereof, imprisonment. And hee held  
that all scandalous words, which if they  
were true, would make a man lyable  
either to a pecuniary or a corporall pu-  
nishment, would beare an action.

But *Mallet Justice*, and *Bramston*  
*Cheife Justice*, were of a contrary judge-  
ment, and their reason was, because  
that if this should be law, it would bee  
a great occasion to increase and multi-  
ply actions for words, which the Law  
labours to suppress as much as may be  
for then all words spoken of any man,  
which if they were true would subject  
him to a penalty, either by the Com-  
mon, or the Statute Law would beare  
an action, as to say of a man that hee  
hath erected a Cottage, or committed  
a Ryot, or the like, would bee actio-  
nable, which the Law will not suffer  
for

for the reason aforesaid, and judgment was given accordingly.

*Mallet* Justice in the arguing of this case, said, that there was an action then pending in the Common-Pleas, for calling of a man Recusant, and he said that his opinion was, the action was not maintainable, I never heard what became of that case, but I conceive the Law to be with Justice *Mallet*, for though there bee many penalties and forfeitures provided by statutes against Recusants, yet no corporall punishment is given by any of them; no not after conviction.

Hob. Rep.  
pa 183.  
pl. 188.

*Thorneton* brought an action against *Iobson*, and layed that he was a Carrier and of good fame, and that the defendant said of him, that he was a common *Barretor*. In this case the booke sayes, that the Court was of opinion, that if these words were spoken of a Justice of Peace, or publike Officer, or of an Attorney, or the like, that they would beare an action; by which it is evident the Court did incline against the action in this case.

Mich. 4.  
Iac. in the  
Kings  
Bench.

In an action upon the case for words, the words were *I am sorry for thy Wife*

and

and Children, thou art a common Barre-  
tor, and I will indict thee for it at the next  
Assizes, &c. adjudged the words were  
not actionable, and by Telvorton Ju-  
stice the action will not lye for saying  
that, he is a Barretor, no more then  
for saying that he is a Riator, a peace  
breaker, or the like, and an action, will  
not lye for saying, that a man is a  
Rogue.

To say an Attorney, that hee is a Hob. Rep.  
Champertor, will beare an action. Bar. Pa, 159.  
I conceive upon the case aforesaid, that Pl. 145.  
to say of one, who is no Attorney, Ju. box and  
Justice of Peace, nor other publike Office- barnabics  
case;  
er that he is Champertor, or a common  
maintainer of suites, will not be actio-  
nable, nor is it actionable in case of the  
Attorney to say that he is a common  
maintainer of suites.

The reason of these cases may bee,  
because that though any man may bee  
indicted for being a common Barretor,  
Champertor, or maintainer of suites,  
and thereupon fined and imprisoned; yet  
the punishment is only the Fine, and  
the imprisonment as a consequent or in-  
cident thereunto.

And as it said before in *Hawes*  
case

case; if an action should lye in the cases, then in all cases, where a man shall charge a man with a crime or offence, for which a man might be indicted and fined, an action would lye which would occasion multitudes of suites of this nature, that the law labours so much to suppress.

And now I have shewn you what words which touch or concerne a man in memory, or any corporall punishment, will bear an action. I shall in the next place shew you what words in such case will not be actionable; and that may bee in three cases, either by reason of the doubtful or indifferent meaning of them; or of the incertainty of the words themselves, or of the persons of whom they are spoken, or of the subsequent qualification of them; or upon the other ground and reasons which I have laid down before.

For we must know (that I may speak once for all) that all those grounds which are before set downe, where words shall not be actionable, which touch or concerne a mans life; will agree with all actions for words whatsoever, where

her that the words touch or concerne  
man in corporall punishment, as be-  
fore; or in his Office or place of trust,  
or in his calling or function by which  
he gaines his living, or the like, as is  
manifested likewise in part before, and  
shall bee more fully hereafter; but to  
the point, what words in this case will  
be actionable.

*Rex and Barnabies* case cited before, Hob. Rep.  
to say of an Attorney, that he is a Cham- p. 159. pl.  
petitor, will beare an action. But to <sup>a</sup> 45.

say that he is a common maintainer of  
sutes, will not beare an action for  
there is maintenance lawfull and un-  
lawfull; an Attorney may, and ought  
to maintaine his Clyents cause, and an  
attorney may well bee said a common  
maintainer, because hee is common to  
many as will retaine him, thus you  
see, words of a double intendment,  
shall be taken best for the Speaker, for  
the words in this case shall not bee in-  
ferred of any unlawfull maintenance,  
but of a lawfull maintaining of his Cly-  
ents causes.

*Stanhope* brought an action for these  
words. *Master Stanhope hath but one*  
*Honor, and that hee hath gotten by*  
*swearing*

*(swearing and forswearing: adjudged the words were not actionable, for the reason [amongst others] because, that for ought appeares hee might bee forsworne in ordinary communication and not in any juditiell proceeding which is not punishable by the Law and where the words are of an indifferent meaning, the Law will (as is before) take them the best for the Speaker.*

Pasch. 15  
Car. in the  
Kings  
bench.

*Smith brought an action for the words; Then art forsworne, and he taken a false oath at Hereford. Affirmed by the opinion of Jones, and Barlow Justices [the other Justices absent] the action will not lie, because that he might be forsworne in ordinary communication; otherwise if hee had said that he had taken a false Oath in the Assises, for there it shall be intended that he forsworne himselfe in a juditiell proceeding.*

*In a case that I have cited before which was Mich. 41. & 42. of the Queene in the Common Pleas; the case was remembered by Williams, the art, &c. thou wert forsworne in the Kings Bench, he said that in that*

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ged the Plaintiff could have no judgement because of the double intendment of the words, for they may bee taken that he was forsworne either in the Court, or the Prison, and the best shall be taken for the Speaker, viz. that he was forsworne in the Prison.

*Weaver* brought an Action against *Cooke* lib *Cariden* for these words, he is detected 4. fo, 16 a for perjury in the *Star-Chamber*, adjudged that the action would not lie, because that an honest man may be detected, but not convicted, and every one who hath a Bill of perjury exhibited there against him is detected, here the words doe not positively affirme him to be perjured, and therefore not Actionable.

*Thomas* brought an action against *Hob Rep* *Exworth* for these words; *this is John pa, 3, pl. 4* *Thomas his Writing, he hath forged this Warrant*; adjudged the action would not lie.

*Harvy* brought an action against *Hob Rep* *Duckin*, for saying that the Plaintiff *pa, 36. pl. 4* had forged a Writing, adjudged that the words were not Actionable, the reason of these cases, is because of the uncertainty of the words, *Warrant* and

and *Writing*, and as I have given you the rule before, the scandall must be certaine and apparent in the words themselves, otherwise they will not be actionable.

By *Tanfield Justice* in *Wisemans* case cited before, if a man say that one of his Brothers is perjured, no action will lie because of the incertainty.

In the case which I put you before moved by *Williams*, *Mich. 41. & 42* of the *Queene* in the *Common Pleas* this case was remembred by *Walmsley Justice*, one of you forged a *Subpoena* out of the *Chancery*; (*innuendo* the Plaintiff) he saith that judgement was stayed in this case; because hee which is greeved ought to bee certainly defamed and the (*innuendo*) cannot make the words more certain, here likewise you have examples, that where the person is incertaine that is scandalifed no action will lye.

Hob. Rep.  
p. 467.  
pl. 395.

*Powell* brought an Action against *Winde* for these words, *I have matter enough against him, for Mr. Harlow hath found Forgery, and can prove it against him*: Resolved the words were not Actionable, because they were too general

general

in your general and utterly incertain.  
 In *Arbiteridge's* case cited before; *Brill*  
 was a perjured old knave; and that  
 is to be proved, by a stake parting the  
 land of *H. Martin*, & *Mr. Wright*, id-  
 judged the words were not actiona-  
 ble, because the subsequent words  
 which extenuate the former, & ex-  
 plain his intent, that he did not intend  
 any iudiciall perjury, & because that it  
 is impossible that a stake should prove  
 him perjured; here you have words, that  
 are not actionable, by reason of the  
 qualification of the subsequent words,  
 thus you may see that the ground  
 formerly laid downe, may serve as a  
 Touchstone for all cases of scandalous  
 words. The third part of that rule or  
 ground which I have laid down before,  
 which I am now to handle is this,  
 That scandalous words spoken of a  
 man which touch or concern a man in  
 his Office, or Place of Trust, will beare an  
 action.  
*Skinner a Merchant of London* said  
*Baron* that he was  
 corrupt Judge, & judged the words  
 were actionable.  
*Studley a Justice of Peace* brought

Coke lib.

4. fo. 19. a

Coke lib.

4. fo. 19. a

and 16. a

Cook lib.

4 fol. 16. a

an Action for these words, Mr. *Stam* covereth and hideth Felonies, and is not worthy to be a Justice of Peace, adjudged the Action would lie, because it is against his Oath, and the Office of a Justice of Peace, and good cause to put him out of Commission, and for this he may be indicted and fined.

Pasch. 7  
Iac. in the  
Kings  
Bench.

*Pridham* and *Tuckers* case, to say of a Constable that he is a concealer of Fellons, adjudged actionable.

Trin. 36.  
of the  
Queene  
Rot: 223.  
in the  
Kings  
bench.

*Stafford* Justice of Peace brought an Action against *Poler* for these words *William Web* being arrested as accessory for stealing his owne goods, Master *Stafford* knowing thereof discharged the said *Web* by an agreement of 3 s. to which Master *Stafford*, was party, whereof 30 s. was to be paid to Master *Stafford*, and was paid to his man by his appointment upon a Writ of Error brought in the Chequer Chamber, it was holden the words were Actionable.

Pasch. 37.  
of the  
Queene  
in the  
Kings  
bench  
Rot 147.

*Cotton* Justice of Peace brought an action against *Morgan* for these words *Hee hath received money of a Thief that was apprehended and brought before him for stealing of certain shoes*

to let him escape, and to keepe him  
from the Goale, adjudged the Action  
would lie.

*Mr. Gilbert* Justice of Peace  
brought an Action against *Adams* for  
these words; *Mr. Gilbert* hath done me  
wrong in returning the Recognizance  
of *Podger* in 20. l. where it was taken  
in ten, and the *suerties* in 10. l. a  
piece by the whole Court, the words  
are Actionable.

If a man say of a Justice of Peace,  
that he is a common Barrator, Cham-  
pertor, or maintainer of Suites, the  
words are actionable.

*Carre* brought an Action against  
*Rande* for words, and declared that he  
was Steward to divers great Lords of  
their Court Barrons and of the Lectes  
within their Mannors, and that he was  
Steward of one M. of his Court Bar-  
ton and of the Lecte within his Man-  
nor, the Defendant of this not igno-  
rant said these words, *Mr. Carre* hath  
put a presentment into the *Juries ver-  
dict* against me of 3s. 4d. for suing of  
*Forrest* forth of the Court can-  
trary to, without the consent of the  
Jury by the whole Court the Action

*Path. 4.*  
*Iac. in the*  
*Kings*  
*Bench*  
*this case*  
*common*  
*and Trin.*  
*3. See fo,*  
*18. 2.*

*Mic. 4. Iac*  
*in the*  
*Kings*  
*Bench*

lies because he doth accuse him of fal-  
 sity in his office: but by the better  
 opinion, if he had not alledged in his  
 Count that he was Steward, the action  
 would have layen.

Sir George Moore brought an action  
 against Foster for scandalous words,  
 and sets forth that he was a Justice of  
 Peace in the County of Surrey, and  
 that there was a suit depending in  
 Chancery betwixt the Defendant, &  
 one Richard King, and that a Com-  
 mission was awarded to Sir George  
 Moore, and others, to examine wit-  
 nesses in the said cause, & also to hear  
 and determine it, and that he with the  
 others, dealt in the execution of the  
 said Commission, and that the defen-  
 dant said of the Plaintiff these words,  
 Sir George is a corrupt man, and hath  
 taken bribes of Richard King, and at  
 another time, King hath sent Sir George  
 Moore on horseback with bribes,  
 whereby to defraud equity, Justice &  
 good conscience, resolved that the  
 words were actionable; because that  
 though the Plaintiff be neither Officer  
 nor Judge, nor is sworn, yet because it  
 is a place of great trust reposed by the

King

Sir George  
 Moore  
 Foster

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*Actions for Slander.*

ling in the Plaintiffe, and for that he  
is punishable for Bribery or corruption  
in the execution of the said Commis-  
sion, in the Court out of which it issues  
not deserving (if the words were true)  
to be employed in the like Commis-  
sion, or any other, for these causes the  
words were held to be actionable, &  
Popham, *Chiefe Justice* in this case made  
no difference, where the Commission  
issues to one, and where to many; nor  
where they are nominated by the  
Court, where by the party, for in the  
first case (he said) the confidence of the  
Court is all one; & in the last, though  
that they be nominated to the Court  
by the party, yet they shall not be  
Commissioners without the appro-  
bation of the Court.

Sir Richard Greenfield brought an  
action against Furnace for these words  
thou (innuendo, Captain Greenfield)  
hast received money of the King to  
buy new Saddles, & hast couzened the  
King, and brought old Saddles for the  
troopers. It was objected that the  
action would not lie, & it was likened  
to these cases, which I will cite, because  
they are worth the knowing.

171  
in  
the Kings  
Bench

in  
the Kings  
Bench

to  
the  
Bench

Pasch. 27.  
Car. 1.  
Kings  
Bench



3 Car. in  
the Kings  
Bench.

3. Car. the Major of *Truro* called  
one said of him that the Major had  
couzened all his Brethren, &c. adjudged  
not Actionable.

9. Jac. in  
the Kings  
bench.

9. Jac. in the Kings Bench, the O-  
verseer of the poore hath couzened the  
poore of all their bread, this was like-  
wise said to be adjudged not actiona-  
ble; but I doe somewhat doubt of this  
case, because the words do scandal  
the Plaintiff in his office of Overseer  
but to this it may be said that this is  
an office of burden and trouble, and  
not of profit.

26. of the  
Queene  
in the  
Kings  
bench.

26. Of the Queene in the Kings  
Bench, *Kerby* and *Walters* case they  
are a false knave; and hath couzened  
my two Kinsmen, adjudged the words  
were not actionable.

18. of the  
Queene  
in the  
Kings  
bench.

18. Of the Queene in the Kings  
Bench; Serjeant *Fenner* hath couzened  
me, and all my kindred, adjudged the  
words would not bear an Action.

See fo. 23.  
b. 24. a.

Out of which cases we may (by the  
way) observe this for Law; that if  
a man say of another (without any pre-  
cedent communication or his Office  
place of Trust, or profession) that he  
is a couzening, or a cheating knave,

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that he hath couzened any man thus and thus, that no action will lie for such words generally spoken, otherwise if they be spoken in reference to a mans office, place of trust, or profession.

And in the principall case it was resolved by *Henth Justice*, and *Bramston chiefe Justice*, (the other Justices being absent) that the action would lie; because the words did scandal him in his place of Trust, and they said it was not materiall what imployment the Plaintiffe had under the King, if by the speaking of these words, he might be in danger of loosing his Trust or imployment.

*Bray* brought an Action against *Hayne* and declared that where he had been Bayly to Sir *William M. Kr.* for three yeares last past of his Land in *C.* and had the selling of his Corne and Grain, the Defendant said these words unto him thou art a couzening knave and thou hast couzened me in selling false measure in my *Barley*, and the Countrey is bound to curse thee for selling with false measures, and I will prove it, &c. adjudged the words were

not

Hob. Rep.  
pa 104. pl.  
93.

Note Reader this case agrees with the cases immediately before.

not Actionable, for every falsehood charged upon a man in his private dealing will not be actionable. And in this case it doth not appear that these words were spoken of any sale of Corn whilest he was in his Office of Bayliffe, nor of his masters Corn, nor of the damage of his Master.

But it was agreed in this case, that if he had been a common Rider or Badger, & had been charged with selling false measure, it would have born an action, which is evident because it is a slander to him in his function by which he gaine his living.

And my Lord *Hobart* puts this case, if a man (saith he) have a Bayliffe, to whom he commits the buying & selling of his Corn and graine, & gives him the greater wages in respect of that trust and imployment, and charges him to have deceived him in his Office by buying and selling of false measure, to his losse or damage, this will bear an action, because this discredits him in his office, & may not only, because to put him out of that service, but to be refused of all others. In this case is evident Reader, because the

words

stands to charge him with selling  
with false measure, whilst he was in  
the Office of the Debtor of Sir George Moore,  
in the case before cited these cases  
were put by *Williams, Justice*, if one  
say of an Auditor that he hath done  
corruptly, and hath taken bribes, no  
action will lie; the reason may be, be-  
cause being chosen by the parties it c-  
elves, & not being sworn, such cor-  
ruption is not punishable by law, nor  
in the countermanding of his pow-  
er be any damage to him.

But if a man say of a Weyer in a  
Market, or Faire, appointed to wey be-  
tween the buyer & seller, that he hath  
done corruptly, and hath taken bribes  
to make false weits, an action lies for  
these words, because he is an Offi-  
cial.

*Miles Fleetwood* Generall Receiver  
of the Court of Wards for the King,  
brought an Action against *Curbey* for  
these words; *Mr. Dissiver* hath decei-  
ved and couzened the King, and dealt  
falsely with him, adjudged the words  
to be actionable.

The like case, where one said of an  
Auditor

Hob. Rep.  
pa. 375. pl.  
351.

49 Es. 61. b. r.  
Action  
upon the  
case 112.

Auditor, that he was a Frauditor, and  
adjudged Actionable.

An action was brought for calling  
the Plaintiff false Justice of Peace, *vel*  
*similia*. I do conceive that these words  
are not actionable, because though they  
doe reflect upon his Office, yet they  
are too generall. But the Booke saith  
that these words (*his familia*) were  
ordered to be expunged or drawn out of  
the Booke, for the incertainty; and yet  
they might indeed; for certainly, if  
a man shall bring an action against an-  
other, and shall declare that the Defen-  
dant said of the Plaintiff that he was  
a Rogue and a Theefe, or words like  
these, or to this effect, the action will  
not lie, because the words upon the  
very face of the Declaration are utter-  
ly incertaine.

The Law affords very few cases  
(Reader) where words shall not be ac-  
tionable that scandal a man in his office  
or place of trust upon those grounds  
which I have formerly laid downe.

But note this that all those grounds  
(as I have said before) are as a touch-  
stone for all Actions, for words which  
soever, and therefore if you meet with  
scand

scandalous words, which touch a man in his office or place, of such, examine by those rules, if they be too general, or not sufficiently positive, or if of a double intendment, or doubtful meaning, or uncertain in themselves, the person of whom they are spoken, or the like, in such cases they will not be actionable, and therefore those cases ought especially to be observed.

The fourth part of that generall rule which I have laid downe before, and which in course I must now speake of, is this, That words spoken of a man, which scandal him in his profession or function, by which he gaires his living, will beare actions.

In *Yardleys* case there being a communication or discourse of him in his profession of Attorney, one said that hee was a bribing knave.

In *Boxes* Case one said of him, being an Attorney, that he was a Champertor. In *Byrchlyes* case an Attorney; there being speech of his dealing in his profession one said to him, you are well knowne to be a corrupt man, and to deale

Hob. Rep.  
pa. 13. pl.  
17.

Hob. Rep.  
pa. 359.  
pl. 145.  
Cook lib.  
4. f. 16. a



dealt corruptly, adjudged in all the cases, that the words, because the scandal was in his profession, which he both acquire his living were actionable.

Hob. Rep. 2. So by the opinion of the Court  
Pa. 183. *Thornston and Iobson* etc, cited before  
Pl. 188. to say of an Attorney that he is a common Barrator, will bear an action.

Mich. 2. *Dawdy* an Attorney in the Court  
Jac. in the *Ipswich* brought an action against  
Kings. *Dawdy* for these words; *Dawdy* is  
Bench. a knave, and a confounding knave, and  
did take Fees of both hands in a  
between me and *Greene*, and by it  
very sufficed me to be condemned  
*Ipswich* at *Greene* suit wilfully, being  
Attorney for me; the only words he

Hob. Rep. 2. considered in this case, were these  
Pa. 183. the Defendants saying that the Plaintiff  
Pl. 17. took Fees of both hands, and  
whether this would amount to  
much as if he had said the Plaintiff

Hob. Rep. 2. was an ambidexter was the question  
Pa. 183. *Popple* and *T. P. Norton*, Justices  
Pl. 145. the action would not lie, because the  
Cook the words in this cause may have  
4. 1. 1. double intendment, for it may be  
tended that he took Fees with both  
hands



ends lawfully, but if he had said, that  
there was an ambidexterity in the law, would  
for this is the case, and cannot be  
otherwise intended, as a fiction, that the  
law is not *ambidexter*. Justice that the  
law would lie for that the words are  
as much as *ambidexter*, and  
the English of it is a direct affirm-  
ation, and no Metaphor, if a man say of  
another that he hath the *Pex*, he ac-  
tually will lie, because it shall be intended  
a small *Pex*; but if a man say of a  
man, whether that he hath been laid off the  
law, there an action will lie, because  
it is the phrase for the French *Pex*.  
I do rather incline to the latter opi-  
nion, because (as hath been said) these  
words are but the English and proper  
signifying of *Ambidexterity*; and to con-  
vince them to making Fees with both  
Plaintiffs, would be to make a constructi-  
on against the expresse meaning of the  
law; which I conceive the law will  
not permit, and the rather as this ob-  
jection, because that he doth charge him-  
self with the very in suffering of him with-  
out cause to be condemned in a suit being  
have authority; I do not find any judge-  
ment in the case, therefore I shall  
leave

of the  
Queens  
in the  
Kings  
bench.

Cooke lib.  
4. fo. 10. b.  
H. 8. Dyer  
21.  
H. 3. f. 1. c.  
in the  
Kings  
bench.  
228. 20.

Palsch. 24  
of the  
Queene  
in the  
Kings  
bench.

leave it to the Judicious Reader. *Phillip* Parson of *D.* brought an  
on against *Bulby* for these words  
hast made a seditious Sermon  
ved the people to sedition this day  
this case notwithstanding the first  
of the words were utterly adject  
the latter were but a motive to  
on, and it doth not appeare that  
things ensued thereof; yet because  
scandalized the Plaintiffe in his  
on it was resolved that they were  
onable.

Cooke lib.  
4. fo. 19. 6  
E 61 Dyer  
72!

Mit 3. Jac.  
in the  
Kings  
bench.  
Rot. 855.

It is a main say of a Merchant that  
a Bankrupt, or that he will be a  
rupt within two dayes, the words  
actionable.

*Edmunds* a Marchant brought an  
on against *Whetstone* for these words.  
He would prove that Master *Edmunds*  
had been a Bankrupt, and had  
with his Creditors for a Noble  
the pound. It was moved in Ar  
judgement by *Hitcham* that the  
on would not lie, because the  
speech referres to a time past  
though that he were once a Bank  
yet it may be now that he is of  
But it was resolved that the

would lie, because that it was an im-  
 peachment of his credit for if he were  
 a bankrupt every man will be the  
 more suspicious and fearefull of him-  
 self. A Marchant brought an Action for  
 calling of him couzening knave; by  
*Justice and Barkley, Justices* [the other  
 Justices absent] the action will not lie,  
 because that the words are to general,  
 but if they had touched him in his pro-  
 fession they would have born an action.  
 And therefore to call a Marchant  
 bankrupt, will bear an action; but to  
 say of a Lawyer that he is a Bankrupt,  
 will not be actionable the reason may  
 be, because that a Lawyer cannot be a  
 bankrupt, for that he doth not acquire  
 his living by buying and selling as the  
 Statutes speake.

*Justice Jones* in the former case put  
 this case, there being a communicati-  
 on of *Serjeant Heale* in his profession.  
 And he said of him these words, He hath  
 been many adjudged that the words  
 were actionable, because they touch  
 him in his profession.

A Shoemaker brought an Action  
 against one for calling of him Bankrupt  
 and was adjudged upon a Writ of Error in the

*Pasch, 15.*  
*Car in the*  
*kings*  
*bench.*  
*this agrees*  
*with the*  
*former ca-*  
*ses see fol.*  
*21. a, b.*

*Trin 37.*  
*of the*  
*Queene in*  
*Cam, lea-*  
*ce, Osbe-*  
*ston and*  
*Stanleys,*  
*case.*

*Che-*

Pasch. 15.  
Car. in the  
Kings  
Bench.

Averre-  
ment

Pasch. 15.  
Car. in the  
Kings  
Bench

Averre-  
ment

Chequer Chamber, that the Action would lie. *And* a Dyer brought an Action gainst *Morda* for these words, thou art not worth a Great, and averses that in such a place, where they were spoken they have the common acceptation, & equivalent to the calling of man a Bankrupt, resolved that the words of themselves were not actionable, because that many men in the beginnings are not worth a Great yet their credits are good in the world. And that the averment are idle and could not make them actionable because that the words have a plain & proper significant meaning of their own, and therefore cannot be taken in another sense or meaning.

A Jurneman & foreman of a Shoemakers Shop brought an Action for these words, it is no matter who hit him, for he will cut him out of Dore & averses that the common acceptation and intendment of these words *inter calsearios*, is that he will beat his Master, and make him run away, and averses a particular damage for the speaking of them, resolved that the Action would lie.

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Note Reader, here the avertement is good, because the words cutting out of Doores, are of a doubtfull meaning and intendment, and so may be aided by an avertement, so that the difference betweene this and *Axes* case cited before, is evident.

*Knightly* an Attorney brought an Action against *Childoner*, for these words spoken to his Sonne; *my Father was not cast over the Barre as thy Father was*; the parties were at issue, and in this case *Walmesly*, Justice, said that he conceived the words were not actionable.

Trin. 41.  
of the  
Queene in  
the Com-  
mon Pleas

*Box & Barnabies* case before, the defendant said of the Plaintiffe, being an Attorney, these words (amongst others which were held actionable) that he would have him thrown over the barr the next Tearme: in this case (agreeing with the opinion of *Walmesly* before) the opinion of the Court was, that these words were not actionable, because of the uncertaine sence and meaning of them.

Hob. Rep.  
p. 159.

*Dickes* a Brewer brought an Action against *Fenne*, and declares that the Defendant having communication with

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some

Some of the Customers of the Plaintiff concerning him in his profession said these words of him, *I will give a peck of Malt to my Mare, and lead her the Water to drink, and she shall pisse good Beere as Dicks doth brew;* adjudged the words were not actionable, because that they are Comparative only and besides they are impossible, and therefore, they can be no Scandall to the Plaintiff.

In this case it was said by Rolls, Sergeant, that it had beene adjudged actionable, to say of a Brewer that he brews naughty Beere; which was agreed by the Court because that he is presentable in a Leete for it.

And likewise in this case it was said by Bartley, Justice, that where one is of a lawyer, that hee had as much Law as a Munkey, that these words were adjudged not actionable, because that he hath as much Law & more than the Monkey hath, but if he had that he had no more law then a Monkey, these words would be actionable.

One said of a Counsellor at law, that he was a Conccaler of the Law, adjudged actionable.

Sandars

## Actions for Slander.

*Sanderfon and Knuds case*, the Plaintiff being a Lawyer and standing for the Stewardship of a Corporation, the Defendant said of him that he was an ignorant man; the Court in this case inclined that the words were Actionable.

*Snag* a Counciller at Law brought an Action against *Peter Gray* for these words, *Go ye to him to be of your Counsell, he will deceive you, he was of Counsell with me, and revealed the secrets of my cause*. Adjudged the words were actionable, because that this cannot be intended of a Lawinll revealing to the Judge, by way of motion, before whom it was tried, for this were a commendation for him, but the words are to be taken as they were spoken, that is *conjunctim*, and *diversim*, and then his intentions appears contrary, for he said before, he will deceive you &c. Also the Plaintiff declared that they were spoken *Maliciose*. And these words revealed the secrets, &c. are to be intended revealed to those from whom they ought to be concealed, and every man to make the bust of his cause, and therefore *secretis sua non sunt revelanda*;

Trin. 17.  
Carlin the  
Common  
Pleas,

Trin. 136  
of the  
Queen  
in the  
Kings  
Bench.  
Rot. 114.  
Coke's En-  
tries fo 22  
a Bench  
Bench  
Common  
Pleas



and also the words touch the Plaintiff in his Art and science, which requiers men of great trust & confidence, and so the words before being spoken in derogation of the confidence and fidelity of the Plaintiffe, are a great slander to him; for these causes judgement was given for the Plaintiff.

Vpon this case I do conceave, that to say of a Lawyer generally, that he revealed the secrets of his Client's cause will beare an action.

One said of a Doctor of Physick that he was a Mountbanke, an Empericke, and a base fellow; adjudged the words were Actionable.

Prine brought an action upon the case for words, and shewed how that he was a Farmer and used to sow his land, and to sell the Come upon it, and by this *per majorem partem* he maintained his Family: and that the Defendant said these words of him, he keeps a false Bushell by which hee doth cheat and couzen the poore, and averres the losse of his custome by the speaking of these words. In this case it was moved by *Gorbals, Serjeant*, in Arrest of Judgement, that the words were not

Actionable

Patch, 12,  
Car. in the  
Kings  
Bench,  
Patch 17.  
Car. in the  
Common  
Pleas.

**Plai** Actionable, because it doth not appeare  
 that the Plaintiffe kept a false Bushell,  
*Scrienter*, knowing it to be false.

But it was resolved that the words  
 were Actionable, for (as this case is)  
 it must of necessity be taken that hee  
 kept a false Bushell, knowing it to bee  
 false, for otherwise it could be no cou-  
 senage.

And this case plainly differs from the  
 case, where an Action was brought for  
 saying, that the Plaintiffe kept false  
 Waites generally, without further say-  
 ing in this case, the words were adjud-  
 ged not Actionable, because that it  
 doth not appeare that he used them, or  
 knew them to be false.

The sixth part of that Generall Rule,  
 which I have laid downe before, and  
 which now I am in course to speake of,  
 is this. *That words spoken in scandall of  
 a mans Title, or which tend to a mans dis-  
 inheritance, wil beare an Action.*

Henry Mildmay brought an Action  
 against Roger Standish, for saying, and  
 publishing that certaine Land was law-  
 fully assured to one John Talbot & Oliffe  
 his Wife for a 1000. y. ares, and that  
 they of the interest of the tearme were

Hil. 6.  
 of the  
 Queen in  
 the Com-  
 mon Pleas  
 adjudged  
 and after  
 affirmed  
 in a V Vrit  
 of Error,  
 Mich. 26.  
 & 27.  
 of the  
 Queene  
 in the  
 Kings  
 bench.  
 Rot. 35.

*Actions for Slander.*

lawfully possessed, whereas in truth there was no such matter, and so for standing of the Estate and Title conveyed to his Wife by certaine indentures, and shewed all uncertaine, and how hee was prejudiced by the said words, he brought the said action.

The Defendant pleaded a proviso in the same Indentures, and the said limitation for 1000 yeares, according to the said Proviso, as he pretended (whereas in truth the said limitation was void in Law) by force of which he saith, that the said *Oliffe* had an interest for a 1000 yeares, and so justified the words, upon which the Plaintiffe demurred: adjudged that the action would well lie; though that the said *John Talbot* and *Oliffe* his wife had such a limitation *de facto* for a 1000 yeares, which occasioned the defendant being unlearned in the law so to publish it, yet for that he hath taken upon himselfe notice of the law, and meddled in that which did not concern him, and hath assumed and published that *Oliffe* had a good estate for a 1000 yeares, in slander of the Title of the plaintiffe, and to his prejudice, for the

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fenda

cause judgment was given for the Plaintiffe.

Sir *Thomas Gresham* Knight, brought an action against *Robert Gresham* Clerk, and shewes how his Father was seized of divers Mannors and Lands, and amongst them of the Mannor of *Tiersey*, which he did by his will amongst other lands devise to *Beatrice* his wife, for life, the remainder to the plaintiffe and the heires males of his body begotten, and had issue *William Gresham* his eldest sonne, and the Plaintiffe the younger, and dyed, and that *William* after his death confirmed to *Thomas* his estate, and that *Beatrice* died, and the Plaintiffe entered into the said Mannor of *Tiersey*, and further shewes, that *William* had issue *Elizabeth* his heire apparent, and that the plaintiffe had a wife, and sonnes and daughters; and that he had an intent to conveye some of his lands to his wife for her joynture, and some to his sonnes and daughters for their advancement, and to exchange parcell with others, and to make a lease of another parte, but doth not shew to whom, and that the defendant *premissorum non ignarus* in de-

Hil. 3. Jac  
Rot. 5 196  
B.R.  
Cooke's  
Entries  
fo 35 a.

rogation of the Title and estate of the plaintiff, said these words, to the plaintiff. As I before said to your Wife, I say now that your brother was a fool and never borne to doe himselfe any good, for that he could not hold his hands from ratifying and subscribing to his Fathers will: but yet notwithstanding, I have that to shew in my house that if his heire doe not any such Act as hee hath done, it shall bring her to inherit *Tittesey*, by which words he saith, that he was hindred in the conveyances aforesaid.

In this case it was resolved, that the Action would not lie; first, because that the words themselves are not scandalous to the Title of the Plaintiff: the words considerable are onely these, that he had that in his house, &c. that shall bring her [that is the Daughter and heire of *William*] to inherit *Tittesey*; which apparently feasible, for the Plaintiff being Donee in Taile of the gift of his Father, the Daughter and Heire of the eldest Brother is inheritable to the Reversion in Fee; and so no prejudice to the Plaintiff, to say he hath that which shall bring her to inherit.

Beside,

Besides, the action will not lie, because that he doth not shew any special damnification by the speaking of these words, as that he was upon a sale of these lands to I. S, who by reason of the speaking of these words refused to buy them, or the like; and in this case there was nothing but a purpose, or intent for conveying some of these lands.

And Popham, Justice, said, that there is a difference when a man declares his opinion of the Title of another to land, this is nothing, and he shall not be punished for it, but if he doth so publish, that it comes to the hearing of any one that intended to buy the Land, in such case an Action lies, but he must shew specially in his Count in what he was damnified, otherwise the Action will not lie.

Barister brought an Action against Barister for that the Defendant said of the Plaintiffe (being Sonne and Heire of his Father) that he was a Bastard, resolved, that the Action would lie, for it tends to his dis-inherison of the land which descends to him from his father.

But in this case it was resolved, that if

Trin. 25.  
of the  
Queene  
in the  
Kings  
Bench

*Actions for Slander.*

if the Defendant pretend that the plaintiff was a Bastard, and that he himself was next heire, there no action lies.

So if a man say that another hath no right to land, an Action lies; but if a Counsellor say that his Client hath a better right, this will not beare an action.

Mich. 3. Jac. in the Kings Bench *Curiam*, if one say to me that I am a Bastard, If I have Land by descent, shall have an Action upon the case, though that I have land by descent, and this tends to my disinherittance, if I be in Court Christian for it, a Prohibition lies, because that the tryall there may be to my disinherittance.

And if one say to another that hee is base borne, an action will not lye, the words shall be taken in *melioribus sensibus*. And if one say to his Sonne that he is a Bastard, or a Leaper, hee shall not have an action neither in Court Christian, nor at common Law.

**Coke lib. 4. fo. 18.** Sir Gilbert Gerrard brought an action against Mary Dickinson, and declares how that he was seised of certaine lands in Fee, and that he was in communication to demise them



Ralph Egerton for 22. years for 200. l. fine, and 200. l. rent per annum; and that the Defendant (*premissorum non ignorans*) said, I have a Lease of the Mannor and Castle of H. (which was the same lands) for ninety yeares, and shewed & published it, &c. by reason of which words (he saith) the said Ralph Egerton did not proceed to accept the Lease &c.

In this case it was resolved, that no Action would lie for the said words, though they were false, because that the Defendant pretended an interest in the said land.

So if the Defendant had affirmed and published that the Plaintiff had not any right to the said Land. but that she herself had right to it, in this case, because that the Defendant pretends title to it, though, that in truth, she hath not any, yet no Action lies. For if in such case an Action should lie, how could any one make claime or title to any land, or commence any suit, or seeke, advise and Councell, but hee should be subject to an Action; which would be very inconvenient.

Agreeing with these cases, in 2. E. 4. 2. E. 4. 5. and 15. E. 4. 32

and 15. E. 4. it is resolved that no action upon the case lies against one for publishing another to be his Villein.

The first part of that generall Rule which I have laid downe before; and am now to speak of, is this.

*That scandalous words which tend to the hinderance or losse of a mans advancement, or preferment, or which cause any particular damage, will bear an Action.*

Coke lib.  
4. fo. 16. b.

*Anne Davies* brought an Action against *Gardiner* for these words, spoken to one *B.* a Suiter to the Plaintiff and with whom a marriage was almost concluded. I know *Davies* Daughter well, shee did dwell in Cheape-side, and a Grocer did get her with Childe, and shee saith, that by reason of the speaking of these words, the said *Davies* utterly refused to take her to Wife, that thereby shee lost her advancement, &c. adjudged that the Action would lie, because that if she had a Bastard she was punishable by the Statute of 18. Henr. 6. the 3. cap. 3.

But it was in this case further resolved; that if the Defendant had charged the Plaintiff with bare incontinency,

only,

only, yet the Action would have lain;  
 one reason that by the said slander shee  
 was defeated of her advancement in  
 Marriage. And it was in this case likewise re-  
 solved, that if a Divine be to bee pre-  
 sented to a Benefice, and one, to defeat  
 him of it, saith to the Patron that he is  
 Heritique, or a Bastard, or that he is  
 excommunicated, by which the Patron  
 refuses to present him (as he well  
 might if those imputacions were true)  
 and he loses his presentment, that in  
 this case an Action will lie.  
*Danie Morrison* Widdow, brought  
 an Action against *William Cade* Es-  
 que, and quire, and declares that she was of  
 good fame, &c. And that *Henry Earle*  
 of *Kent* was in speech and communica-  
 tion with her for marriage, the Defen-  
 dant premissorum non ignarus, said these  
 words, *Arscot* hath reported that hee  
 had the use of the Lady *Morrison*'s body  
 to his pleasure; *ubi vera*, *Arscot* never  
 reported it, and alledged that the Earle  
 of *Kent* upon the hearing of the words  
 ceased his suit, by which she lost her  
 advancement, &c. upon not guilty plea;  
 it was found for the Plaintiffe, & in  
 this

Hil. 4.  
 Jac. in the  
 Kings.  
 Bench.  
 Rot. 1153

*Actions for Slander.*

this case it was resolved, that though the words charge the Plaintiff with bare incontinency only, which is no offence Ecclesiasticall, and not civil, yet not punishable by our Law, yet because of the temporall damage, viz. the loss of her advancement in marriage, an Action would well lie, which agrees with the judgement in *An Davies case*.

**Trin. 17.  
Car. in the  
Common  
Pleas**

*Sanderfon and Ruds case* cited before, the Plaintiff being a Lawyer, stood for the Stewardship of a Corporation, and the corporation being assembled to elect a Steward, the Plaintiff was motioned to them, whereupon the Defendant being one of the corporation, said to his Brethren, he is an ignorant man, and not fit for the place, and the Plaintiff sees that by reason of these words they did refuse to elect him Steward, so that he thereby lost his preferment, &c. the Court in this case inclined that the Action would lie.

And now I am fallen upon a question very necessary to be resolved, and that is.



*What words are actionable of themselves only? and what are not actionable.*

## Actions for Slander.

[ 92 ]

without alledging of a particular damage; take this for a rule, That scandalous words which touch or concern a man in his liberty, or member, or any corporall punishment, or which scandall a man in his office or place of trust, or in his calling or profession, by which he gaines his living, or which charge him with any great infectious disease, by reason of which hee ought to separate himselfe, or to be separated by the Law from the society of Men; all such words will beare an Action, without averring or alledging of any particular damage by the speaking of them.

Yet I do not deny, but that it is best to alledge a particular damage, if the case will beare it; and it is usuall so to doe in these cases, for the increase of damages.

*Bransford*, chiefe Justice in the arguing of *Hawes* case which I remembered before, tooke this for a Rule, that if words did import a scandall of themselves, by which damage might accrue, in such case the words would beare an Action without alledging of a particular damage.

But now on the other side, words which do not touch or concerne a man in any  
of

Mich. 17.  
Car. m<sup>ch</sup>  
Kings.  
Bench.

of the cases aforesaid will not beare an Action, without alledging of a particular damage.

Words spoken in scandall of a man's Title, will not beare an Action; without averring of a particular damage, as appears by the cases before cited on that ground.

Cook lib.

4. fo. 15. b.

Averre-  
ment.

There are many words, which are words of passion and choler only, as to say of a man that he is forsworn generally, or that he is a villain, or a rogue, or a varlet, or the like, these words are not Actionable of themselves; yet I doe conceive that in these cases an Action will lie with an Averrement of particular damage, by reason of the speaking of them.

Cook lib.

4 fol. 17. a.

& fo. 20. a.

27. H. 8. 14

the Regi-

ster fo. 54.

There are other words which concern matter meerely Spirituall, and are determinable in the Ecclesiastical Court only; as for calling of a man a Bastard, a Heretique, a Schismaticke, an Advowterer, a Fornicator, for calling of a Woman a Whore, or charging with any particular act of incontinency, or the like, yet in these cases without an averrement of a particular damage an Action will lie at the Common Law.

it is adjudged in *Anne Davis* case cited before.

By *Popham Chiefe Justice* if one say Cook libel of a Woman that is an Inholder, that she hath a great infectious disease, by which she loses her guests, an action will lie, this must be taken with an averment of that particular damage; otherwise an Action will not lie, unless the disease be such, for which she is thought to separate her selfe, or to be separated by the Law from common society, as I shall shew you hereafter.

*Axe and Moods* case cited before, the Plaintiff being a Dyer brought an Action for these words, thou art not worth a Great, adjudged that the words were not Actionable, because that many men in his beginning is not worth a Great, and yet hath good credit with the world.

But in this case it was agreed that if the Plaintiff had averred specially that he was thereby damnified, and had lost his credit so that none would trust him with such an averment the Action would have layen.

In the case of the Foreman of a Shoemakers shop cited before,

H

these

Cook libel  
4, fol 1711

Pasch. 15.  
Car. in the  
Kings  
Bench;

Mich. 153  
Car. in the  
Kings  
Bench.



these words; it is no matter who hath said  
him, for he will cut him out of doctement  
the Plaintiff averred that the Common  
mon acceptation of these words, *im* So like  
*Galceareas* is, that he will begger his  
Master, and make him run away; and  
shewed a speciall damage by the spee  
king of these words, and it was adju  
ged that the Action would lie, which  
conceive was only for the particular  
damage, for to say of a servant that he  
doth Cheat, Cousen or defraud; or that  
he will begger his Master, or the like  
will not beare an Action, without an  
averrement of a particular damage.

And in this case it was said by the  
Court that for some words an Action  
will lye, without an averrement of a  
particular damage, as for calling of  
man Theefe, Traytor, or the like, and  
some words will not beare an Action  
without an averrement of a particular  
damage.

As if a man shall say of another that  
he kept his wife basely, and starved  
her, these words of themselves will not  
beare an Action; but if the party  
whom they were spoken, were to  
married to another, and by these words

no had hindered; in such case, with an aver-  
ment of the particular damage, an  
Action will lie.

So like wise in the case of *Dickes* and  
*Went* which I also cited before, where  
it said of the Plaintiffe being a Brew-  
er that he would give a peck of malt  
to his Mare, and lead her to the water  
to drink, and she should pisse as good  
as the Plaintiffe brewed; it was  
resolved that the words themselves  
were not actionable, because of the  
impossibility of them. But it was a-  
vouched by the Court, that if there had  
been a speciall damage alledged, as  
by the usual Custom, or the like, the Acti-  
on would have layen.

Of *Hawes* case cited likewise before one  
of them, that he had spoken against  
the book of Common Prayer, and said  
that it was not fit to be read in the  
Church; for which he brought his  
Action, & shewed how that by reason  
of the speaking of these words by the  
Defendant, he was cited in to the Ec-  
clesiastical Court, & had paid & expen-  
sed severall fimes, &c. adjudged that  
the words themselves were not Acti-  
onable, because if they had been true,

Mic. 15.  
Car. in the  
Kings  
Bench.

Mich. 17.  
Car. in the  
Kings  
Bench.

they charge him only with an offence against a penal Law which doth inflict corporall punishment, but not payment of penalty.

But it was resolved that for the particular damage the Action would lie, and of this opinion were *Heath, Mallet Justices*.

But *Bramston Chief Justice*, (the other Justice being absent) was of a contrary Judgment, and hee tooke this for a rule, that if the words did not import a scandal in themselves (as He conceived they did not in this case) in such case the averrement of a particular damage should not make them actionable.

But with all due respect to the judgement of this learned Judge, I do conceive that the words are in themselves scandalous; because that they do charge a Man with faction and opposition to established Law, and settled Government.

But if they were not in themselves scandalous, yet I conceive (according to the judgement of those reverend Judges) that, for the damage only the Action will lie, for otherwise the

He shall suffer through the default of the Defendant, and be without remedy which I conceive the Law wil not Permit, but I submit this to the judgement of the learned Reader.

*Lastly, words which charge a man with any dangerous infectious disease, by reason of which he ought to separate himselfe, or separate by the Law, from the society of men, will beare an Action.*

If a man say of another that he hath the French Pox, an Action will lie.

Coke lib:  
4. fol. 17. a

Taylor brought an action against Perkins for these words, thou art not worthy to come into any honest mans company, thou art a Leapsrous man, and a Leaper, Adjudged that the words are Actionable, because that it cause of separation by the Law of God, and man.

So by *Tenfield Justice* to say that a man is infected with the French Pox, will beare an Action, but to say that a man hath the falling Sicknesse, is not actionable except that it disables him in profession, as to say that a Law-  
yer hath the falling sicknesse, an Action will lie, because that it disableth him of his business.

Hill 4.  
Jac. in the  
Kings  
Bench,

Vpon this ground I conceive to be of a man that he is infected with a Plague, will bear an Action, because this also is a dangerous infectious disease, and a cause of separation.

I have now finished my task shewing you what words are Actionable in the Law, and what not. And yet Reader I shall not end this Treatise here; for there are many things worthy the knowing (which I could not aptly introduce before) & therefore not to be omitted.

*There are two things or grounds very remarkable in all Actions upon the case for words.*

*First Causa dicendi, the ground or occasion of the speaking of the words: And that must be collected out of the precedent discourse or communication concerning the Plaintiff, or else out of the relation that the words themselves have to the Defendant, or otherwise, as the case shall fall out to be.*

*The next thing is the affection of the Speaker, that is to say, whether the words were spoken Ex malitia, or not?*

First, for the first, *Causa dicendi*, the ground or occasion of speaking of words.

And here I shall lay down this as  
ground, that scandalous words which  
of themselves singly would bear an action  
yet being joyned to other words or dis-  
course, and *in Causa dicendi*, or the sub-  
ject matter being considered, they will  
not bear an Action. For *Sensus verbo-  
rum ex causa dicendi accipiendus est*, &c.  
And words must ever be construed  
according to the subject matter. Coke lib.  
Henry Lord Cromwell brought an 4. fo. 13. b  
Action, *de Scandalis Magnatum* against  
Edmund Denny; Vicar of N. in the Coke ubi  
County of Norfolk, &c. for these supra.  
words: It is no marvill that you like  
not of me; for you like of those that  
maintain sedition against the Queens  
proceedings: the Defendant pleaded a  
speciall justification, in effect thus;  
that the Defendant being Vicar of N.  
the Plaintiffe procured *J. T.* and *J. P.*  
to preach there, who in their Sermons  
conveyed against the Book of Com-  
mon Prayer, and affirmed it to be su-  
perstitious; wherefore the Defendant  
inhibited them, for they had no licence  
nor authority to preach, yet they pro-  
ceeded through the encouragement of  
the Plaintiffe, and the Plaintiffe said

to the Defendant, Thou art a false v  
I like not of thee; to whom the De  
dant said, It is no marvill though  
like not of me, for you like of  
(meaning the foresaid I. T. and I. D.)  
that maintain sedition [meaning  
seditious Doctrin,] against the Que  
proceedings.

In this case it was adjudged that  
justification was good. For though  
in this case taking the words singly  
themselves as the Plaintiffe hath  
clared they might have beene Action  
ble; because that then they could not  
construed other wise then of a pub  
and violent sedition as the word it  
doth import.

Yet now the ground and occasion  
the words appearing by which it is  
vident, that the defendant did not  
read any publike or violent fedition  
b. t only that the seditious Doctrin  
gainst the proceedings of the Que  
viz. the Statute *de anno primo*, by which  
the Common Prayer was establisht  
and God forbid (saith the Booke)  
words by a strict and Gramaticall  
construction should be taken contr  
to the manifest intent of the Speake  
the



Therefore it was ruled upon the cohe-  
 Defiance of all the words, that the justifi-  
 cation was good and so the words not  
 of Actionable.

And in this case it was ruled, that if  
 any man bring an Action against another  
 for calling of him murderer, and the  
 Defendant will say that he was speak-  
 ing with the Plaintiffe of unlawfull  
 killing and that the Plaintiffe confess-  
 ingly said that he had killed divers Hares with  
 hath certain Engines, to whom the De-  
 fendant answered and said, Thou art a  
 murderer [meaning the killing of the  
 public Hares] that this was a good justifi-  
 cation, and so upon the whole matter  
 the words not Actionable.

*Byrchley* an Attorney brought an  
 Action against one for these words;  
 I note you are well knowne to be a corrupt  
 feditious man, and to deale corruptly: resolved  
 the Court that the words were actionable, but in  
 Queen's case it was ruled that if the prece-  
 dent speech had beene that *Byrchley*  
 was a Usurer, or that he was Executor  
 of another, and would not performe  
 the testament, and upon this the De-  
 fendant had said these words upon a  
 speciall justification, as aforesaid, they  
 would

Coke libt  
 4. fo. 14. a.

Coke lib.  
4. 101. 17. a

would not beare an action.

*Banister and Banisters* case resolve that if I call an heyre a Bastard, an action will lie; but if the Defendant pretend that the Plaintiffe is a Bastard & that he is next heyre, there no Action wil lye. The reason of this is plain because *causa dicendi*, or the occasion of speaking of these words, is not to defame the Title of the Plaintiffe; but only to justify the Title of the Defendant, and it is lawfull for any one to speak in justification of his own Title though he do thereby seeme to slander the Title of another man, agreeing with this case is *Gilbert Gerrards* cited before.

See fo. 26  
p. 27. a  
Pasch. 15.  
Car in the  
Kings  
Bench

*Molton* brought an Action against *Clapham*, and declares how that there being a cause pending in this Court betwixt the Plaintiffe and Defendant upon reading of certain Affidavits of the Plaintiffes in Court, the Defendant said openly in presence & *auditu Infliciariorum*, & *juratorum*, &c. There is not a word true in the Affidavits, which I will prove by 40. witnesses; and alledge that the words were spoken *maliciose*

it was resolved by the Court that they were not Actionable, because as they are usuall words upon the like occasion: so they are spoken in the defence of the defendants cause, and this case was likened to the case of the Defendant immediately before.

And *Bartley Justice* said that there are two things mainly considerable in words, the words themselves, and *causa dicendi*, and therefore sometimes though the words themselves would bear an Action, yet *causa dicendi* being considered, they will not be Actionable, as in this case.

Now as my Lord *Cooke* ses in *Cromwells* case before remembered, so I say to you. In these cases, *Reader*, you may take notice of an excellent point of learning in Actions for slander, to observe the cause and occasion of speaking of them, and how this may be pleaded in excuse of the Defendant.

But before I passe this, *Reader*, I shall observe unto you, that the Defendant in these cases might take the generall issue, if he would, *viz.* that he is not guilty, *modo et forma*, as the Plaintiffe hath alledged, and so given in evidence the

Coke lib?  
4. fo. 14. a.

Coke lib?  
4. fo. 13. b.  
14. 2.

the coherence and connection of the words, and the occasion of speaking of them and have them specially found, it be conceived to be necessary.

Or the Defendant may (as the court shall require) justify the speaking of other words, and traverse the speaking of the words in question, and so likewise upon the evidence have the words specially found.

And hereupon where the special finding of the Jury will warrant the Declaration of the Plaintiffe, and maintain the action and where not? may be very questionable, and worthy the knowing.

The Defendants plea is that which must guide us in these cases, if he plead not guilty the words are (as I have said before) *modo & forma* as the Plaintiffe hath alleadged, and if he justify the speaking of other words, and traverse the words in question doth it thus, *absque hoc* that he spake the words in the Declaration *modo & forma* as the Plaintiffe hath alleadged.

Now where the words that are found by the Jury shall be said to agree *modo & forma* with the words in the Declaration, this is the question,

here

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The  
do not  
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rebelli  
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speaki  
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ed by  
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Defen

here I shall lay downe this ground.

That where the words that are found do not agree with the Declaration, in the substantiall and essentiall forme, that in such case, they do not warrant the Declaration. But if they do agree in the substantiall and essentiall forme, though they agree not in every word, yet they do well warrant the Declaration, and by consequence maintaine the Action.

Sydenham against *Man* for these words; If Sr. *John Sydenham* might have his will he would kill all the true Subjects in *England*, and the King too: and he is a maintainer of Papistry and rebellious persons. The defendant pleaded other words, and traversed the speaking of the words *modo & forma*, &c. the Jury found that he spoke these words, viz. I think in my conscience, that if Sir *John Sydenham* might have his will, he would kill &c. and find all the subsequent words before alledged, and whether the defendant were guilty of speaking of the wordes in the manner and forme as they are alleadged by the Plaintiffs in his Declaration, was the Question resolved against the Defendant.

Hob. Rep.  
pa. 252.  
pl. 213!

And

here

And upon a writ of Error in the Chancery Chamber, the Court also inclined against the defendant, for the matter is in effect the same, and the form must be understood the essential forme, not according to every word here you have the ground laid down before.

Yet the Book saith that Pasch. re. though the Court inclined that either of the words would bear an action, yet it was agreed that the words were not found so absolute as the Declaration, neither moved credit in the ear so fully which is the force of a slander; and then they are not the same words in force and effect, as if the words were laid, I know him to be a thief, and were found, I think him to be a thief.

For my part Reader, I doubt in this case whether the finding of the Jury do warrant the Declaration, because they are not the same words in force & effect (as is said before) And I conceive they are not the same in the essentiall forme of them, for I question (as I have don before) if a man should say of another that he doth think if he might have his will, he would kill all

the Kings true Subjects, and the King  
or that he doth think such a one  
to be a Theefe whether these words  
actionable or no, because the words  
no positive charge, but onely the  
thought or opinion of the Defendant.

But to this it may be said that if  
such words as these should not be  
actionable, this would open a gap for  
scandalous Tongues, to slander a man  
to his pleasure; and yet no action lie which  
are very mischievous; therefore I  
leave it to the judgement of the  
Court.

*Fenner against Mutton* in an action  
upon the case for words, which were  
said by *Nicholas Fenner* procured 8 or  
10 of his neighbours to perjure them-  
selves the defendant pleaded not guil-  
ty; and the Jury find that the defend-  
ant said that *Nicholas Fenner* had cau-  
sed 8 or 10 of his neighbours to perjure  
themselves and if this Verdict were  
found for the Plaintiff, or the defend-  
ant was the question, and the doubt  
was whether this word (cause) amount  
to as much as procure. *Tausfield* Justice  
said that it doth not, for he might  
be a remote cause, as *causa sine qua non*  
and

Mich. 4.  
Jac. in the  
Kings  
Bench;



& yet no procurer, as if a notary w  
a writing, and put to this a seale, a  
another take it and forge and publi  
it, the writer was the cause that  
was forged and yet no procurer of  
I find no judgment in this case, ther  
fore ceure of it.

Hil: 3.  
Jack in  
the Kings  
Bench, h

*Chipman* against *leeke* for these words  
*Chipman* is a Theefe, for he hath stollen  
a Lambe from A. and *Geese* from B. and  
killed them in my ground, issue  
joyned whether the defendant spoke  
the words *modo & forma, &c.* the Ju  
find that the defendant said that  
Plaintiffe was a Theefe, for hec ha  
stollen a Lambe from A. and killed  
in my ground but they find that  
spoke nothing of the *Geese*, yet it w  
resolved that the finding of the Ju  
did wel warrant the declaration  
the Plaintiff, because that the  
stance of the words is, that he  
theefe, and therefore he hath, &c. only  
demonstration in what he is a Theefe  
which is as well in stealing of  
Lambe, as of the *Geese*, and then  
bee found that he said any of them  
sufficeth, and judgment was given  
the Plaintiff.

has

Norm

*Norman* and *Synsons* case, the plain- Trin. 71  
 tiff brought an action for words and Car in the  
 declared that they were spoken *falso* Kings  
 & *malitiose*; the Jury find the words Bench.  
 spoken *falso* & *injuriöse* and it was ad-  
 judged that the Action would not lie,  
 because the finding of the Jury doth  
 not warrant the Declaration in the  
 substantiall forme of it, for if the words  
 were not spoken out of malice, they  
 will not be Actionable, as I shal shew  
 you hereafter.

*Brugis* brought an action for these 6.E.6.Dy-  
 words, *Brugis* is a maintainer of theens re fo. 75.  
 and a strong Theefe himselfe, issue was fol: 21,  
 joynd whether the Defendant spoake  
 the words *modo* & *forma*, and the Jury  
 found all the words except the word  
 [strong] and in this case the Plaintiffe  
 had judgement.

Here we may observe that though e-  
 very word alledged in the Declaration,  
 be not found, yet the essentiall and sub-  
 stantiall forme of the words being  
 found, that is sufficient to maintaine  
 the Declaration. This I say you may  
 observe not only by this case, but the  
 cases also before put.

*Barbar* brought an action against  
 I Hawley

*Hawley* for these words *John Barber* and his Children be false Theeves, men cannot have their Cattell going upon the Common, but they will kill them and eat them, &c. issue was joyned whether the Defendant speake the words *modo & forma*, and the Jury found that he spake these words, viz. Men cannot have their Cattell going upon the Common; but *John Barber* and his Children will kill them with *Barbers* Doggs, in this case it was judged for the Defendant.

The reason is plaine, because the words found by the Jury, do vary from the essentiall and substantiall forms from the words in the Declaration. For the words in the Declaration charge the Plaintiffe with Theft; to which an Action would lie, but the words found by the Jury charge him only with trespassse; for which no Action will lie, I have sufficiently proved the ground laid down before, and therefore I shall now proceed to the second thing [which I have touched before] very considerable in all Actions for words, and that is.

*Quo animo*, with that affection

Words are spoken, whether ex malitia or  
not: for if it do appeare that they were  
not spoken out of malice, they will not be  
actionable.

Ralph Brook, York Harranild brought Mich. 31  
an Action against Henry Adowntagie, lack. in  
Knight, Recorder of London for saying the Kings  
of the plaintiffe that he had committed Bench  
Felony. The Defendant pleaded  
how that he was a Counsellor & lear-  
ned in the Law, & that he was retain-  
ed of Counsell against the Plaintiffe  
at such a Tryall, and set forth all the  
matter in certain, and that he in gi-  
ving evidence to the Jury spake the  
words in the Count (which words  
were pertinent to the matter in issue)  
in this case it was resolved that the  
Action would not lie, because that the  
words were not spoken out of malice  
but that they were spoken to the pur-  
pose, and being to the purpose, though  
the words were false, no action will  
be against the Defendant.

As in an Appeale of murder, if the  
Counsell with the plaintiffe saich that  
the Defendant committed the murder,  
though it be not true, yet he shall not  
be punished for it, because that what

said was pertinent, so that it cannot be taken to be spoken out of malice, but only as of Counsell for the Plaintiff.

But if that which he saith be impertinent in scandall of him against whom he speaks it, as in Trespass or battery to say that the Defendant is a Felon, there an Action will lie, for that they cannot be otherwise taken but to be spoken out of malice.

And in this case it was further said, that if a Counsellor be informed of any matter of slander apt to be given in evidence, and hee speaks it at other places, and at another time, then in evidence an Action lies for it, for the same reason.

In confirmation of the former case there was this case put and agreed for Law, which was the case of person *Pris* in *Suffolke*, the case was thus, In the Acts and Monuments of Mr. *For* there is a relation of one *Green* of *Suffolke* who is there reported to have perjured himselfe before the Bishop of *Norwich* in the testifying against a Martyr in the time of *Queen Mary*, & that afterwards by the judgment of God, as an exemplary punishment

for his great offence his bowels rotted  
out of his belly.

And the said Parson *Prit* being new-  
ly come to his benefice in *Suffolke*, and  
not well knowing his Parishoners,  
preaching against perjury, cited this  
story for an example of the Justice of  
God, and it chanced that the same  
*Greenwood* of whom the story was  
written, was in life and in the Church  
at that time, and after for this slander  
brought an Action, to which the De-  
fendant pleaded not guilty, &c. and  
upon evidence all the matter appeared,  
and by the rule of *Anderson* Justice of  
Assise he was acquitted, because it did  
appear the defendant spake the words  
without malice, and this rule was ap-  
proved by the Kings Bench in this case.  
In the arguing of *Sanderson* and *Rudds*  
case which I remembred before, these  
cases following were cited by *Gorbolt*  
Serycant, who was of counsell with  
the Defendant, and agreed by the  
Court for Law.

*James* and *Rudlies* case, the Defen-  
dant spake by way of advice to his  
friend, telling him that the Plaintiffe

40. & 41  
of the  
Queene in  
Common  
Pleas,

was full of the French Pox, & therefore  
advised him not to keep him compa-  
ny, adjudged (he said) that no Action  
would lie for these words of advice,  
the reason is, because that these words  
were not spoken out of any malice to  
the plaintiffe, but merely out of good  
will to his friend.

Trin. 7.  
Car in the  
kings  
Bench!

*Norman and Simons* case remembre  
before the plaintiffe brought an Action  
for words, and declared that they  
were spoken *falso & malitiose*; the  
Jury find the words, and that they  
were spoken *falso & injuriose*, judge-  
ment was given that the Action  
would not lie, because that they did  
not find the malice; for if the words  
were not spoken maliciously, no Action  
will lie.

And therefore I conceive that if a  
man bring an Action for words, and  
do not declare that the words were  
spoken *malitiose* as well as *falso* that  
the Action will not lie.

Hil: 4. Jac  
in the  
Kings  
Bench.

In the case of the Lady *Morrison* that  
have cited before this case was put by  
*Popham* cheife Justice: If one say  
Councell and good will to his friend



that it is reported that he hath done  
such or such an ill Act, and advises him  
to purge himselfe, and avoid such oc-  
casion afterwards, it seemes (saith he)  
that an Action will lie for such coun-  
cel; but quere saith the Reporter, for  
it is without malice. And truly for my  
part, I conceive an Action will not lie  
for that reason, but I submit it to the  
judgement of the Reader.

And now I have finished my labour  
of shewing you what words are Acti-  
onable in the Law, and what not. It  
will, in the next place, be very necessa-  
ry to be known, where a mans Suit or  
prosecution at Law, shall subject a  
man to an Action, & where not, & here  
I shall lay down this as a rule.

*That for any suit, or other legall pro-  
secution in course of Justice [if not out of  
malice and touching a mans life] no action  
will lie.*

A man brought a writ of Forger of  
false deeds against a Lord, pending  
which Writ, the Lord for the slander  
of the said Forgery by the said suite,  
brought his Action *de scandalis Mag-  
natum*; the Defendant justifies the said  
slander by bringing of the said writ, by

13 H. 7.  
keilway  
fo. 26. 11.  
of the  
Queene  
Dyer. fo. 2.

the better opinion there [which is also agreed for Law in *Bucklies* case in my *L. Cookes* 4. Book] the justification was good, for [saith the Book] no punishment was ever appointed for a suit in Law, though that it were false, and for vexation.

Coke lib.

4.fo.14.b.

*Cutler* and *Dixons* case, adjudged that if one exhibit Articles to a Justice of Peace against a certain person, containing divers great abuses and misdemeanours, not only touching the petitioners themselves; but many others, and all this to the intent that he should be bound to his good behaviour, in this case the party abused shal not have for any matter contained in such Articles, an Action upon the Case, because that they have pursued the ordinary course of Justice in such case, and if Actions should be permitted in such cases, those which have good cause of complaint, will not dare to complain, for feare of infinit vexation.

*Owen Wood* exhibited a Bill in the Star-chamber against *Sir Richard Buckley*, and charged him with divers matters examinable in the same Court, & further, that he was a maintainer of Pi-

rates

is also  
in my  
a was  
anish  
suit in  
nd for  
In this case it was adjudged, that for  
he said words not examinable in the  
aid Court, an action would lie, because  
his could not be in course of Justice;  
or that the Court hath not power or  
urisdiction to do that which belongs  
o justice, nor to punish the said offen-  
ces, &c.

Also by the Law no Murder or Py-  
acy can be punished upon any Bill  
exhibited in *English*; but the offender  
ought to be indicted of it, & upon this  
to have his tryall; so that he that pre-  
ferred this Bill hath not only mistaken  
the proper Court, but the manner and  
nature of prosecution, so that it hath  
not any appearance of an ordigary suit  
in course of justice.

But if a man bring an Appeale of  
murder returnable in the Common  
Bench for this no action lies; for though  
the writ is not returnable before  
competent Judges, which may do ju-  
stice, yet it is in nature of a lawful suit,  
namely by writ of appeal. *Scarlet*

Hob. Rep.  
pa. 268.  
pl. 238.

*Scarlet* brought an Action against *Stiles* for these words; *thou dost steal a Sack*. The Defendant pleaded that there was a Sack of a mans unknown stolen, & that the common fame was that the Plaintiff had stolen it, whereupon the Defendant did informe *Thomas Kempe* a Justice of Peace, that he had stolen it, and in complaining and informing the said Justice thereof, he did there in the presence of *Kempe* one of the Plaintiffs, say unto the Plaintiff & of him, *thou dost steal &c.* Whereupon the plaintiff demurred in law.

There is nothing spoken to the contrary in the Book; but I conceive the law will be somewhat strong, for the Plaintiff, that the demurrer is good, and that the Action notwithstanding the Defendants justification will well stand.

For though common fame [as it is agreed in *Chudington* and *Wilkins* case] be a sufficient warrant to arrest for felony, though the same be not true, yet it is agreed in *Bland* & *Masons* case, that these tend to the advancement of Justice; yet it doth not warrant a man, to say he is a Felon and a Thief.

Hob. Rep.  
pa. 425  
pl. 381

also to charge a man with felony [as it is agreed in *Bland* & *Masons* case] but these tend to the advancement of Justice; yet it doth not warrant a man, to say he is a Felon and a Thief.

though common fame be such, yet  
the party suspected may be innocent.  
Nor doth it any way difference the  
case, that the words were spoken be-  
fore a Iustice of Peace, because though  
common fame may (as I have said)  
warrant him to charge him with felony  
before a Iustice of Peace, yet it cannot  
warrant him to call him felon.

A man brought an action against  
another for calling of him Theefe;  
The defendant pleaded that there was  
Robbery done, &c. & *communis vox*  
& *fama patrie* was that the Plaintiffe  
was guilty of it, and so justifies; but the  
justification was held nought, for  
common fame that a man is a Theefe,  
will not justify any man in the calling  
of him so. But there it is agreed, that  
one would defend a man in arresting  
and imprisoning another for it.

*Cuddington* and *Wilkins* case adjudg-  
ed that to call a man a Theefe after a  
generall, or speciall pardon, though the  
Defendant knew it not, will bear an  
action, but there it is agreed, that to  
call a man for Felony after pardon  
if he knew it not may be justifiable;  
because it is a legall course and an Act  
of justice.

Hob Rep  
Page 93  
pl 71 et  
p 112  
pl 105

In

Trin: 16.  
Car. in  
the kings  
Bench.

In *Justice Crooks* case it was agreed by the Court, that though it be lawful for a man to prefer a Bill in the star-chamber against a Judge for corruption, or any other, for any grand misdeameour, because it is a proceeding in an ordinary course of justice. Yet if the plaintiffe will publish the effect of his Bill in a Taverne or other place openly, by this meanes to scandall the defendant, this is punishable in another Court, notwithstanding the Bill pending in the Star-Chamber, because it tends meerly to scandall, and not to pursuing of the ordinary course of justice, and so *Jones* Justice said it had been adjudged.

*Owen Wood*, and *Buckleys* case cited before doth in effect make good that which Justice *Jones* said; the case was thus, *Owen Wood* exhibited a Bill in the Star-chamber against Sir *Richard Buckley*, and charged him with very great misdemeanours: afterwards *Buckley* brought an action against *Owen Wood*, for publishing that the said Bill and matters in that contained were true, and had judgment, which was afterwards reversed in the Chancery Chamber.

Chamber, because that the plaintiffe  
 layed that the defendant published  
 the Bill to be true, without expressing  
 the matters in particular conteyned in  
 the Bill, upon which the action was  
 intended to bee founded, so that those  
 which heard only the said words that  
 his Bill was true, cannot without fur-  
 ther saying, know the clauses which  
 were slanderous to the plaintiffe. So  
 that it is in this case plainly admitted  
 that if hee had published the particu-  
 lar matters contained in the Bill, and  
 this had beene shoven by the plain-  
 tiffe, there the action would have  
 layen.

*Note Reader*, I have inserted this  
 clause, in the rule before layd down  
 where the prosecution in course of  
 justice, is not out of malice, and touch-  
 ing a mans life] for this reason,

Because I do conceive, *That in case*  
*where a man is scandalized in his reputa-*  
*tion, and his life in question, by a maliti-*  
*ous prosecution in course of justice, that*  
*in such case an Action will lye.*

If two falsly and maliciously conspire  
 to indict another, and after he that is  
 indicted, is acquitted, a writ of con-  
 spiracy lyes. So if one onely falsly and  
 maliciously

F. N. B.

114. D.

Cook lib!

5. fol. 56.

The Poul-  
 terers case



malitiously cause another to be indicted, who is thereupon acquitted, an action upon the case in nature of conspiracy, lyes against him for it; & it hath been often adjudged, I shall only remember one case in point.

Pasch. 3.  
Jac. in the  
kings  
Bench  
Rot. 372.

*Marshall* brought an action against *Pescod*, & declares how that he was of good fame & report, and that the defendant intending to defame him, & maliciously procured the plaintiff to be indicted of Felony, & to be arrested & imprisoned, *quousq; fuit acquiescens*, so that the alleaging of the acquittal was insufficient; for that he ought to have said that he was *legitimo modo quietatus*, the Defendant pleaded guilty, & it was found for the plaintiff & *Richardson* said in arrest of judgment, that this action will not lie, because it is not alledged that he was lawfully acquitted, and said that *F.N.B.* is the like Writ, & there it is alledged expressly, that he was lawfully acquitted, and so it ought here.

*Tanfield Justice*, A conspiracy, not an action in nature of a conspiracy, is not lie, if the plaintiff be not *legitimo modo quietatus*; but if one procure another

another to be indicted, arrested, & imprisoned, *falso & malitiose*, he shall have an Action upon the case for the slander and vexation, though that he be never acquitted; and he said that the like action upon the case had been judged to lie well, though that the Plaintiffe were never acquitted, and the Justices relied much upon the words *falso & malitiose*, and after judgement was given for the Plaintiffe.

Thus you may see that where a man is falsely & maliciously procured to be indicted, if he be acquitted, a Writ of conspiracy, or an Action upon the case of the nature of a conspiracy, as the case shall be, will lie, and though he be not acquitted, yet an Action upon the case will lie for the slander and vexation. In all these cases, there is a prosecution in course of Justice; but because the prosecution was malicious, tending much to the slander & scandall of the Plaintiff, therefore the Action lies. But here I would have you observe, reader, that the Plaintiffe ought in these actions to declare, that the Defendant, *falso & malitiose* procured him to

to be indicted, because the malice is the ground of the Action; and if upon the Tryall it doe appear that there was *Probabilis causa* for the indictment and prosecution thereupon, the Action will not lie. Thus much shall suffice to shew you, in what case a legal prosecution in course of Justice shall Subject a man to an action, in what not. In the next place I shall shew you which cannot omit.

*For what scandal of a noble man, great officer, &c. an action de scandalis Magnatum will lie upon the Statute*

Coke lib. 4, fo 12. b. 3. E. 1. cap. 33. or 2. R. 2. cap. 5.  
13. a.

For a suit or other legal prosecution in course of justice against a Noble man, or great officer, no action lies as is adjudged in the case of *Forger* false deeds cited before, so that in this, there is no difference between a Noble man and another person. What scandalous words may be actionable in case of a Noble man, for which an action de scandalis Magnatum will lie, and what not, may be very considerable. I shall cite only one case for this purpose, which will be as a rule to all cases of this nature, and there

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give me leave to give it you wholly  
[without dissection or abbreviation] as  
I find reported.

The Earle of *Lincolne* brought an  
*Action de scandalis Magnatum* upon  
the Statute of *Westm. 1. cap. 33.* against  
one *John Righton*, and recited the Sta-  
tute, and said that the Defendant said of  
him: my Lord is a base Earle, and a  
paltry Lord, and keepes none but  
Regues and rascals like himselfe. Vpon  
not guilty pleaded it was found for the  
Plaintiffe, and it was moved in Arrest of  
iudgement that the words were not  
actionable; for though they were un-  
seemly and immodest, yet they were not  
such defamatory words upon which to  
ground an Action; for though they  
were true, the Earle could not incur  
any prejudice by them, *Crooke cont.*  
this *Action de scandalis magnatum*, is  
not to be compared to other Actions  
upon the case; for words spoken of any  
other persons; for this is inhibited by  
Act of Parliament, and if the words be  
such, that any discord may arise by them  
betwixt the King & his Subjects, or his  
Nobles, or any slander to them, to bring  
them into contempt, this Action lies.

*Trin. 5.*  
*Iac.* in the  
Kings  
bench.

and I have seen a Record of a case in 4. H. 8. of such an action brought by the Duke of *Buckingham*; for such words which might cause him to be in contempt, which were holden sufficient upon which to ground an Action, *Herbert Attorney Generall* for the Plaintiffs also; who said that though an Action doth not lye for words betwixt common persons, but in case where they are touched in life or Member, or much in reputation; yet if one speak any scandalous words of an Earle or other Peere of the Realme, which impeaches their credit, because that they are of the great Councell of the King and State, and a principall part of the body politick, so that their discredit or disparagement, is a disparagement to all the Realme, therefore every thing which trenches only to their discredit is a cause of action, and this was the cause of the judgment in the case of the Duke of *Buckingham* in 4. H. 8. *Fenner Inst.* it seemes to me that the action lies for they are words of great slander to the Earle. But where the Statute of *Marle* is that Lords shall not distraine the Beasts of the sub-

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ject of the King, and carry them into Castles, so that they cannot be replevied; and if one say that a Lord hath so done, yet an Action will not lye, *Tanfield Justice concessit*, but he saith if one say of a Lord that he used to distraine and put the Beasts in his Castle, *ut supra*, an action lies; for one act against Law will not bring him into contempt: but if it be usuall for him so to do, this is a cause to make him contemptible. In the case of the Earle of *Arundell*, who had made Commissions to his Servants to make Leases; and improve Rents one said of him, *My Lord busles his Commissioners to spoyle the Countrey*, it was adjudged that this Action would lye; and yet in case of a common person, it would not lye without doubt, yet because that it may cause the Lord to be in contempt with the King and the people this Action lay, and so it seemes to me that it will here, *Williams Justice* to the same purpose, & that the Earle is, *conseruator Pacis* at common Law, and *Comes Regis*, and if any one speak of them any thing which may make them to be contemned of the King or his people, an action lies  
K 2 upon

upon this STATUTE.

*Telverton Justice* was absent, judgement was respited to the intent that the Defendant by his submission might give satisfaction to the Earle

Here you see the difference between words actionable in case of a Nobleman, and of a common person. For words only of discredit to a Nobleman, and which may bring him to contempt with the King or his people, are sufficient to maintaine an Action *de scandalis magnatum*, otherwise in case of a common person.

I have now *Reader*, quite finished my labour of shewing you for what scindalls an Action will lye; for what not. But before I conclude, there are two things, yet in all Actions for words worthy the knowing, which I cannot omit. The first is to declare unto you the use or office of an (*innuendo*) And the next is, to shew you, where an *Averment* will be necessary, and where not.

For the first you may take this for certain, and infallible rule.

*That an (innuendo) shall never make words actionable, which of themselves are not Actionable,*

*And the difference between words actionable and words innuendable.*

As if a Nobleman say to another Nobleman, I innuend that the King is a coward. In the words of the law, and

Actionable. Such an Action will lye in the law. Else.

So if a Nobleman say to another Nobleman, I innuend that the King is a coward. In the words of the law, and

Actionable. If a Nobleman say to another Nobleman, I innuend that the King is a coward. In the words of the law, and



*And therefore, if Words be of a double or different meaning, and in the one sense actionable, in the other not; in such case an innuendo shall never make them actionable.*

As if a man bring an action against another for saying that he hath the Pox *innuendo* the French Pox] or for saying that the Plaintiff burnt his Barne [*innuendo* a Barne with Corne.]

Coke, lib.  
4 fo. 17. b.  
& 20. a

In these cases the [*innuend*] where the words are of an in different meaning, and may be taken so as not to be actionable, shall not straine them to such an intenddement, as to make them actionable; and therefore the (*innuendo*) in these case idle and to no purpose.

*So if the words be uncertaine of themselves, or the person of whom they are spoken, an [innuendo] shall never make them actionable,*

If a man bring an action against another for saying that the Plaintiff tooke away money from him with a strong hand [*innuendo felonice*] here the words being iuncertaine in the intendment, whether of a Trespas, or Felony the (*innuendo*) cannot extend them to

Mich. 15  
Car. in the  
Kings;  
Bench.  
cited before.

an intendment of felony, thereby to make them actionable, and so it was adjudged.

So if a man bring an action against another, for saying that he forged a warrant (*innuendo quoddam Warrantum &c.*) as *Thomas* and *Axmorths* case cited before, or for saying that he forged a writing (*innuendo* such a writing as *Harvy* and *Duckins* case is likewise cited before. In these cases, because the words themselves are utterly uncertain, adjudged that the (*innuendo*) shall never make them actionable.

**Coke lib.** A Servant of *B.* brings an action against one for these words; One of the Servants of *B.* (*innuendo* the Plaintiff is a notorious Felon, or Traytor, &c.) And if an Action be brought for these words, I know one Neere about *B.* that is a notorious Theefe, (*innuendo* the Plaintiff:) in these cases, because of the incertainty of the persons intended by the words the [*innuendo*] shall not make them actionable.

I could multiply cases upon this ground, but because these will be sufficient; I will adde only the Office of a [*innuendo*]

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*B.* in h  
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*C.* was  
said the  
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*nnendo*  
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*The office of an [innuendo] is only to Cooke lib. 4  
contain and designe the same person, which fol. 17. b  
was named in certain before : as thus,  
two are speaking together of B. and  
one of them saith, he is a Thiefe: there  
B. in his Count may shew that there  
was a speech of him betwixt those two,  
and that one of them said of him, he  
(innuendo the Plaintiff:) is a Thiefe.*

*Or else to declare the matter or sence  
of the words themselves, which was cer-  
tainly expressed before; as thus, A. and B.  
speaking of C. A. said that C. was a  
Traytor, to whom B. said that he was so  
too: in this case, if A. bring an Action  
for these words, he may shew in his  
Count, that there was a speech betwixt  
him and the defendant of C. and that  
the plaintiffe said to the defendant that  
C. was a Traytor, & that the defendant  
said then to the plaintiffe, that he (in-  
nuendo the plaintiffe) was so too [in-  
nuendo a Traytor.]*

*In both these cases the (innuendo) is  
good, because it doth its Office, in de-  
signing of the person, as also in decla-  
ring of the matter or sence of the words  
which was certain before.*

*But an (innuendo) cannot make a per- Cooke lib 1  
son fol. 17. b*

son certaine which was incertaine before, nor alter the matter or sence of the words themselves; for it would be inconvenient, that actions should be maintained by imagination of an intent, which doth not appear by the words, upon which the action is founded; but is utterly incertaine, & subject to devisible conjecture.

For by this means, if I should be suffered to be the declarer of the meaning or intendment of the incertain and doubtfull speeches of another man, I might judge him to speake that, he never thought or intended, and so punish him for that wherein he never offended.

*The next and last thing to be considered is where an averremment will be necessary in these actions, and where not: and here I shall lay down this as a ground.*

*That in all cases for words where there is any thing that is the cause or ground of the action, or tends necessarily to the maintenance of it, in such case the action will not lie, without that thing be expressly averred to be, or not to be, as the case requireth.*

ne be-  
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de in-  
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ob for these words; Thou (*innuando*  
gr.) hast poysoned *Smith* (*quendam*  
*Sam; Smith ad tunc defunct. innuendo*)  
adjudged the action would not lie for  
this reason (amongst others) because  
that did it not appear that *Smith* was  
dead at the time of the words spoken;  
and the (*innuendo*) for that purpose is  
no sufficient averrement.

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The like case was *Trin. 17.* of this  
King; A. brought an action against  
B. for these words, *thou hast killed my*  
*brother (innuendo C. &c. fratrem &c.*  
*super mortuum)* adjudged the action  
would not lie, because the plantiffe did  
not averr that he was dead at the time  
when the words were spoken, and it  
was ruled that the *innuendo* was not a  
sufficient averrement.

The reason of these cases, is, because  
the death of the party is the ground of  
the action, and if hee were not dead  
which shall the rather bee intended,  
without the plantiffe do expressly aver  
him to be dead) then the plantiffe  
could not be indamaged by the speak-  
ing of the words, and by consequence  
no action will lie for them.

I must confesse that I have a report of

*Trin. 17.*  
*Car. in the*  
*Commen-*  
*Pleas.*

Pasch. I.  
Iac in the  
Kings  
bench  
Rot. 107.

a case which was 5. of King James  
judged against the former cases, and the  
case was thus: Sir Tho: Holt brought  
action against Taylor for these words  
Sir Tho: Holt hath killed his Cooke, &c.  
and did not aver that he had a Cooke  
nor that the Cooke was dead, and the  
was moved in arrest of judgement, and  
by the whole Court the Declaration  
was held good, because it shall not be  
intended, that there is any such purgation  
of the slander as this is, except it doth  
appear in the Record; as the life of  
man, which is reported to be dead. But  
if it were expressed in the Record, that  
the party reported to be dead, was  
life, it were otherwise.

As if words were spoken of a woman  
that she had murdered her husband, &c.  
she and her husband bring the action  
in this case the Action will not lye, be-  
cause that it doth appear by the Record  
that the slander is not prejudicial; but  
is purged notoriously, by the appearance  
being of the husband in life, like *Snag*  
case in my Lord *Cooke* 4. Book *Quar*  
*tamen*; for I doubt Reader the Law of  
this case, because of the cases before  
judged.

*Cooke lib. 4*  
*fol. 16. a*

*A.* Saith that *B.* told him that *C.* stole a Horse, these words with an averment that *B.* did not say any such thing to *A.* will bear an action, like the Lady *Morrisons* case which I have formerly cited, fo. 6. b.

Whether *Welsh* words, or words in *English* doubtful in sense, yet equipollent, and of a common intendment and acceptation in some certain place with words Actionable, will bear an Action, without an expresse averment of the importance of them, or no? *quare & vide* fo. 6. a.

*Hasselwood* and *Garrets* case cited before, Pasch. 13 Jac. in the Kings bench, Ret. 107. whosoever is he that is falsest Theefe and strongest in the County of *Salop*, whatsoever he hath stolen, or whatsoever he hath done, *Thomas Hasselwood* is falsest then he resolved that the words were actionable, with an averment that there were felons within the County of *Salop*; but for default of such averment the judgement given in the Common-Pleas was reversed in this Court.

Note Reader, if there were no felons in that County (which will rather be intended, if it be not averred that there were some) then the speaking of the words



Pasch. I.  
Iac in the  
Kings  
bench  
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intended, that there is any such purgation  
of the slander as this is, except it doth  
appear in the Record; as the life of  
man, which is reported to be dead. For  
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that she had murdered her husband, &c.  
she and her husband bring the action  
in this case the Action will not lye, be-  
cause that it doth appear by the Record  
that the slander is not prejudicially but  
is purged notoriously, by the apparent  
being of the husband in life, like *Snag*  
case in my Lord *Cookes* 4. Book *Quar*  
*tamen*; for I doubt Reader the Law of  
this case, because of the cases before ad-  
judged.

*Cooke lib. 4*  
*fol. 16. a*

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Pasch. 13  
Iac. in the  
Kings  
bench,  
Ret. 107

Hob. Rep.  
page 309

words could be no slander to the Plaintiffe, and so no Action can lie.

*Blands* case cited before, he brought an action against *A. B.* for saying that he was indicted for felony at a Sessions holden, &c. and did not averr that he was not indicted, and after a Verdict for the Plaintiffe judgment was stayed because there was no Averrement, *ut supra*. Note if he were indicted, which he doth tacitly admit, then no cause of action.

Mich. 15.  
Car. in the  
Kings  
bench.

*Johnson* against *Dyer* the Defendant having communication with the Father of the Plaintiffe said to him I will take my Oath that your Son stole my Hemns; and the Plaintiffe did not averre that he was his Sonne, or that he had but one Sonne, and therefore adjudged that the action would not lie. In this case if he were not his Sonne then no cause of action.

Pasch. 7.  
Jac. in the  
Kings  
bench.

One *Clarke* said that he had a Sonne in *Nottinghamshire* who had his Chest picked and a hundred pounds taken out of it, in one *Lock-Smiths* house; and I thank God I have found the Theefe who it is, it is one that dwelleth in the next house called *Robert Kingston*.

upon

upon which *Kinston* brought an Action  
and had a verdict, and it was moved  
in Arrest of Judgement, because that he  
did not aver that he dwelt in the next  
house, *Crooke*, one said that *Prichards*  
man robbed him, who brought an Action,  
and did not aver that he was *Prichards*  
man, and therefore it was held  
that the Action would not lie. And the  
Justices in this case would not give  
Judgement.

*Non constat* in this case that the Plain-  
tiffe was the party of whom the words  
were spoken; for there might be ano-  
ther of the same name dwelling else-  
where, and therefore he ought to aver  
that he dwelt in the next house, that he  
may be certainly intended to be the  
same person of whom the words were  
spoken.

Where words shall not be Actionable  
without an averrement of a special  
dammage. See fo. 28.

I have clearly proved the ground be-  
fore laid down, and by these cases you  
may be sufficiently instructed, where an  
averrement will be necessary, and where  
not. And so I have quite finished this  
small Treatise.

May

May the Reader find as much pleasure  
and delight in the reading  
it, as the Authour had  
composing of it; such is  
urgent desire of

*Your affectionate friend*

**JOHN MARC**



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## *Arbitrement.*

THE next thing *Reader*, that I have undertaken to discourse of, is, Arbitrements, the learning whereof will be very usefull to all men; in regard that Compremiles or Arbitrements were never more in use then now. And most men either have been or may be Arbitrators, or at least have done, or may submit themselves to the Arbitration of others. And as long as differences and contentions arise among men which will bee to the worlds end, certainly the learning of Arbitrements will well deserve our knowledge. Which being well observed and learnt by all men, will be a good meanes to prevent many suits and contentions in the Law for the future which are now daily occasioned through the defects of Arbitrements which rather beget and raise new controversies amongst the parties

parties, then determine the old. The  
 ly cause whereof, is the ignorance  
 men in this learning. The Compe  
 hereof, *Reader*, tooke this paynes, on  
 out of a desire of the common good  
 that none might be ignorant of the  
 which concernes all. And if it sh  
 effect that for which it was made, the  
 instructing of the ignorant, & the good  
 of the publike, the Authour hath  
 ends, and abundant recompence for  
 labour. Which that it may accomplish  
 is the earnest and affectionate desire  
 the true servant to the publike.

10. *MARCH*

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In my Lord *Dyer* it is said, that to every Award, there are five things incident.

Trin. 4. of  
the Queen  
Dyer. fo.  
117. pl. 60

1. *Matter of Controversie.*
2. *Submission.*
3. *Parties to the Submission.*
4. *Arbitrators.*
5. *Rendering up of an Arbitrement.*

Reader, my purpose is (God willing) to prosecute every one of these parts or incidents of an award [though peradventure not in the order before set down] conceiving them to be as exact a discription or delineation of those things that are requisite to every award, as possibly can be made: And indeed, reaching to all the cases in the Law, which do principally and chiefly concern Awards or Arbitrements.

First, then there must be a matter of debate, question, and controversie.

Secondly, this matter of debate, question, and controversie, must be submitted.

Thirdly, there must be Parties to the Submission.

L

Fourthly,

Fourthly, there must be Arbitrators to whom the matter in controversy must be submitted. And lastly, the Arbitrators must make an award or an Arbitrement.

Upon the severall branches, I shall raise severall questions, and debate and cleare them as I goe, and first.

*Who may submit to an Arbitrement  
and who not?*

**I** Take this to be regularly true, that no person, which is not of ability in judgment of Law to make a grant, can submit himself to an Arbitrement.

As men Attainted of Treason, Banish'd, or a Præmunire, Ideots, madmen, a man deafe, dumbe, and blind from his Nativity, a Feme Covert, an infant, a man by duresse for a submission to an Arbitrement must be *Spontane* *voluntate*. Persons Outlawed; for they have no Goods: a Dean without the Chapter, a Major without the Commission of Monalty; the Master of a Colledge without his Fellowes, or the next like. All these as they are incapable

grant

grant, so I conceive, that they are not of capability to submit to an Arbitrement, but that the submission will bee absolutely void in these cases.

The reason of these cases may be, because that they have no power of themselves to dispose of their interest or property, and therefore they cannot transferre such power over to another; for the rule is, *quod per me non Possum, nec per alium.*

And *Hill. 15.* of this King in the Kings Bench, betwixt *Rudston* and *Tates*, it was adjudged, that the submission of an Infant to an Arbitrement was absolutely voyd.

*Hil. 15*  
*Car. in the*  
*Kings*  
*Bench.*  
*Rot. 313.*  
*see 14. H.*  
*4. 12. 10 H*  
*6. 14.*

But now on the other side, I conceive that all persons whatsoever that are not fettered with these naturall or legall disabilities; but are of capacity to make a grant, that such persons may submit themselves to an Arbitrement, as persons not attainted, *compos mentis*, or the like, dumbe, or blinde, Femes sole, without the use of full age, and the like, the submission of such persons to an Arbitrement is good; but enough of this; in the next place I shall consider.

*What things may be submitted  
to an Arbitrement, and  
What not?*

**T**Hat is to say, what things are in  
Law arbitrable, and what not?

Things and Actions which are meerely  
personall and incertaine, as Trespas  
passe, a Ward raken away, and the like,  
are arbitrable.

22 H. 6. 39

4. H. 6. 17.

14. H. 4. 2.

4. H. 6. 17.

2. H. 5. 2.

But things which are of themselves  
certaine, are not arbitrable, except the  
submission be by deed, or that they be  
joyned with others incertaine, as Debt  
with Trespasse, or the like.

The reason that is given in 4 H. 6. is  
because the nature of an Arbitrement  
is, to reduce things to a certaintie,  
which are in themselves incertaine, and  
not to make things more certaine,  
which are certaine already.

And the reason likewise that is there  
given, why a thing certaine, which is  
joyned with a thing incertaine should  
be arbitrable, is because that the arbitre-  
ment is intire, and therefore cannot  
be good, as to that which is arbitrable  
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must understand being of things with-  
in the submission) but being good for  
the part which is incertaine, it will  
make the rest also arbitrable.

Chattels reals or mixt, are not of  
themselves alone arbittable, as Char-  
ters of Lands, Leases, or the like, with-  
out the submission be by specialty.

Debt upon the arrerages of account  
before Auditors, because such Debt is  
due by Record; Annuities, nor Free-  
holdes, none of these are of themselves  
arbitrable, without the submission be  
by specialty.

I must confesse that some of these  
Bookes say, that Arbitrators may award  
a Free hold without Deed. Others say  
that the submission must be by specialty  
(as you may observe before) and some  
say that the Arbitrement in these ca-  
ses must be by deed, and that then the  
arbitrement may be pleaded in Barre  
of an action.

But I take this as a generall rule, that  
no Chattels, reals or mixt, no debts by  
Deed, or Record, no Annuities nor Free-  
holdes are of themselves arbitrable though  
that the submission bee by Deed, and I  
shall prove it thus.

If they were arbitrable of themselves then upon an action brought in any of these cases, an arbitrement were a good plea in Barre of the action, but an Arbitrement in such cases is no plea in Barre of the action, (as appears by the Book before cited) before I conceive that the argument is plaine & evident, that these are not of themselves arbitrable.

But for further prooffe of this ground that I have laid downe; it is taken as a generall rule in *Blacks*, in my *L. Cokes* 6. Book, that an arbitrement is no plea when an action is founded upon a deed, when it is in the Realty, or mixt with the realty, but in such cases only, or at least, regularly, where Damages alone are to be recovered.

I shall conclude this with the Book of 21. E. 3. 26. of 21. E. 3 cited before, that an arbitrement that the one party shall have the land out of the possession of the other, doth not give a Freehold; and if hee refuse to permit him to have the Land, he hath no remedy, if hee hath not an Obligation to stand to the Arbitrement.

By this case wee may learne, as also by that which I have told you before, that

Coke lib.  
4. fo. 43. b.  
44. a.

that though these things are not of themselves arbitrable, & so the arbitrement not pleadable in Barr of an action, Yet a man may in such cases bind himselfe by Obligation to stand to an award (as it is usuall so to do) and for the non performance of the award, the Bond will be forfeited. And this is the submission by Specialty so often spoken of in the Bookes before.

And therefore I conceive that the opinion of *Grewill* and *Pollard* in 23. H. 7 is no Law, who say that where there is a submission of the right, Title, and possession of land [without any other personall difference] to an award, that an arbitrement in such case is void and that an Obligation to obey such an arbitrement is void.

It is true, the Booke makes a quare of it, because that others were, (as the Booke saith) cleere of another opinion: And certainly the Bonde is good, as common experience teaches; I shall put a case like it, which I conceive will plainly prove it.

A man makes a Feoffment upon condition that the Feoffee shall not take the profits, the condition is absolutely

23. H. 7.  
Kelwayfo  
99. pl. 6

Coke up-  
on Little-  
ton. t. 206  
b.



lutely repugnant and void. But a Bond in such case conditioned that the Fee shall not take the profits, is good.

So I say in this case, though the thing it selfe be not arbitrable; yet if a man in such case, will bind himselfe to stand to an award, the Bond is good.

Lastly, causes matrimoniall are not arbitrable, neither are Offences criminal, as Treasons, Felonies, &c. because it concerns the Common-wealth that such offenders be punished. But of

this I am sufficient; the nature or kindes of submission is now to be considered.

Submission to an award may be either

Generall  
Speciall  
Absolue  
or  
Conditionall

Coke lib.  
8 f. 97. 98.  
Baspoles  
case.

Coke ubi  
supra  
Trin. 4. of  
Queene  
Dyer fo.

22.

*A Generall Submission.*

A generall Submission is of all matters, Suites, Debts, Duties, Actions, and demands whatsoever.

*A speciall Submission.*

A speciall Submission is onely of some

some certain matters in controversy,  
such land then in question; or all  
actions of Debt, Trespasse, or the like,  
where I could observe unto you the dif-  
ference betwixt a generall submission  
conditionall, and a speciall submission  
conditional; but because it will be more  
agreeable in case where I shall  
show you, what will be a good arbitre-  
ment and what not, I shall referre it  
rather without further saying.

But of  
kindes  
consider

*An absolute Submission.*

An absolute Submission, is, where the  
circumstance of time, where; the man-  
ner of the arbitrement, how; whether  
sealed or unsealed, or the matter of the  
arbitrement; viz. to arbitrate part, or  
whole, or the like, are wholly left to the  
arbitrators.

Coke &  
Dyer ubi  
supra.

*A conditionall Submission.*

A conditionall submission, is, where  
the submission is with an *ita quod*, or  
*proviso*, &c. the award be made and  
delivered under the hands and Seales of  
arbitrators, before such a time;

Coke and  
Dyer. ubi  
supra.

in

in such case, if the time, manner and matter, are not all exactly observed, the arbitrement will be void; but this more fully hereafter.

Dyer fo.  
216. b. pl.  
59. & 242  
Pl. 52.

*Note Reader,* that a submission may be by word only, as well as by deed, specialty, but the submission by deed is better, for then though the submission be of things not arbitrable, the party forfeites his Bond if he doe not observe it, whereas if the submission were by word only, there were no remedy in such case to enforce the party to performe the award.

*Who may be Arbitrators.  
and who not?*

I conceive it most fit, that such onely should be Arbitrators who, they are indifferently chosen (as it is said in the Condition of the Obligation) are men indifferent, just and upright, swayed neither with favour or feare or affection to either party, likewise having sufficient parts, competent understanding and knowledge in the matter or businesse referred to Arbitrement, having neither legall

ner as persons Attained, convicted of  
 observe perjury &c.) nor naturall impediments  
 but as Infants, Idoots, madmen, or the  
 like.

may These qualifications in arbitrators  
 deed, being duly observed, a man need not  
 doubt of a just & upright sentence, the  
 want of the observation of which,  
 omiffion causes many unjust and endue sentences  
 in Arbitrations.

But I doe not find in our Law  
 that either legall or naturall disabili-  
 ties, doe hinder any man from being  
 an Arbitrator, or avoide his sentence,  
 and certainly they doe not; for this  
 differs much from the submission to an  
 Arbitration, for in such case, a man  
 ties his interest and binds his person  
 which every one is not of capacity to  
 doe; but in this case what he doth as  
 as it an arbitrator, is only to charge or  
 Oblige discharge others. And besides they  
 are chosen by the parties themselves,  
 and if they be not competent  
 judges, the fault is theirs that chose  
 them.

And now I shall proceed to shew you  
 what Arbitrators are, and their power,  
 which you will easily perceive, of  
 what

what high concernment it is to  
to have a speciall care of the choise  
Arbitrators.

*What arbitrators are,  
and their power.*

Pasch, 91.  
of the  
Queene  
Dyer fo.  
35 6:pl 39  
19. H. 6.  
36. 37.  
Coke lib.  
5 fo. 78. a  
8. E. 4. 1. &  
2.

An Arbitrator is, as our Bookes  
say, a Judge, indifferently chosen by  
the parties, to end the matter in con-  
troversie betweene them, *ad Arbitri-  
um*, and therefore they are said to be  
Arbitrators, because they have an Ar-  
bitrary power, and may judge ac-  
cording to there will and pleasure  
that their judgment be according to  
the submission, & these Judges are not  
tied to any formalities, or punctuali-  
ties in Law, neither are they, sworne  
as other Judges established by publicke  
authority are.

Besides, their power is farre greater  
for as they may judge as they please  
keeping themselves to the submit-  
tion, so their sentences are absolutely  
definitive and conclusive, from which  
there lies no Appeale; as it was ex-  
cellently well said by *Heath*, Justice  
in arguing of the case of *Rudston* and  
Tate, that

Tate, that

*Yarr*, cited before, the judgement of Mich. 17. Arbitrators, said he ( provided that Car. in the they keepe themselves to their jurisdiction ) is higher then any judgement given in any Court; for if they erre, no Writt of Error lies to reverse their judgment, no, not so much as Enquiritie against them. Kings bench.

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This is true, where they keep themselves close to the submission; but if they do not, in such case (though no Writt of Error lies to reverse their judgment ) upon an Action brought upon a Bond or promise, for not performing an award, if the Defendant plead that the Arbitrators made no award, and the Plaintiffe replies that they did make an award, and sets it forth in speciall, if it do appeare that the award is void (as it may be in many cases which I shall set forth hereafter) the Action in such case will not lie, as every dayes experience teaches; and in which our Bookes are plentifull. By that which I have said before, it is manifest, how it concerns every man to have a care what Arbitrators hee makes choice of; but of this sufficient. The next thing considerable, is.

*Whether*

*Whether the power of Arbitrators  
be Assignable or not?*

The Law is cleere, that Arbitrators cannot assigne over their power, the reason is, because that it is but a nudo power or Authority, (which is evident in that it is revocable, as I shall shew you hereafter) and therefore by the Law not assignable. To which may be added, that it is a power coupled with a great trust and confidence, and therefore not assignable.

I confesse that the Booke in 47.E.3 doth tacitely admit this power to be assignable where the case is thus. In 47.E.3, 20 Dept., the Defendant pleaded that they submitted themselves to the Arbitrement of two persons, who did award that they should stand to the award of W. P. which W. P. made an award, which he hath performed, &c. here it is tacitely admitted, that the Arbitrators might award that they should stand to the Arbitrement of another, but Brooke in a bridging this case saith, the Law seemeth contrary.

In 8. E. 4. *pro totam Curiam*, except *Telverton*, where a man is bound to stand



stand to the award &c. who award  
that an Action shall be commenced  
betwixt the parties by the advice of  
W. and P. this is a good award, for by  
this W. & P. are not Arbitrators, but  
only executors of the Arbitrement.  
And in this case the Arbitrators judg-  
ed the Title to be tryed betwixt them;  
but know not what action should be  
brought.

But if they had awarded, that the  
parties should stand to the Arbitre-  
ment of W. and P. this had been void,  
because that they cannot assigne over  
their power.

*Talverton* held in the first case, that  
the award was void, for the incertainty,  
because that W. and P. are to give their  
advise, which is not certaine untill it  
be notified, and in this case he hath  
made them Judges.

I confesse that I doe somewhat doubt  
of the case, because the Judgement  
of the arbitrators ought to be finall,  
and this is no concluding of the mat-  
ter in controversy, but a transferring  
of the power over to the Law to de-  
termine it.

besides W. and P. may never give  
their

their advice, or may refuse to do it, in such case the arbitrement will prove idle.

And I do not conceive this case to be like the case in 19. E. 4. where the Arbitrators awarded a certain summe, & a surety of payment thereof, to be bound by the advice of Counsell, for heere their judgement of the matter in controversy is certain, and finall, and here is a sum certain awarded, for which an Action will lie, only the security is to be advised by Counsell; which is not a signement of their power, but of the more hereafter.

Mich. 41.  
& 42. of  
the Queen  
in the  
Common  
Pleas.

*Emery*, and *Emerys* case, the chief point whereof was this; the arbitrators award that the plaintiffe should make such a Release as one of the Arbitrators should like of; in this case the arbitrement was held to be void, because this was an appointing of an authority committed to them all, and not to one, which they cannot do.

I shall conclude this point with *mons* case in *Cookes* 51. Booke, where the case is thus: Arbitrators awarded the Defendant should enter into an Obligation to the Plaintiffe, and

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not judge of what sum the Bond shall be adjudged; the Arbitrement was void for the incertainty, and that the Arbitrators could not assigne over their power, but that themselves ought to determine it; and therefore neither the Plaintiffe nor the Defendant could assesse the same, the next thing considerable is,

*Whether the authority of Arbitrators be countermandable, or not?*

In his case also the Law will be strong and evident, that this authority is countermandable at any time before the award made; but not after, because then the Authority is executed, and cannot be countermanded, and so are all our Bookes but 5. E. 4. where it is said, that if a man be bound to stand to the Arbitrement of I. N. he cannot discharge the Arbitrator, contrary if he were not bound to stand to his Arbitrement; yet *Brooke* upon his case saith, that it is cleare that he may discharge the Arbitrator in both cases? but in the one case he shall forfeit his Bond in the other he shall lose nothing, because *ex nulla submissio-*

28. H. 6. 6.  
21. H. 6.  
30. 49 E. 3.  
9. 18. E. 4.  
9. 8. H. 4.  
10. 5. E. 4.  
3. Br. Arbitrement.  
35. 6. H. 7.  
1. a b.

*one non oritur actio*, so likewise it is resolved in *Vinyors case*, which I shall put you presently.

28 H. 6. 6

In 28. H. 6. by *Astton, Justice*, if there be two Plaintiffs, and one defendant, or two Defendants and one Plaintiff, put themselves to the award of others, neither the one Plaintiff without the other, nor the one Defendant without the other, may discharge the Arbitrators, the reason is obvious, because that they were chosen by the joynt authority of both, and therefore cannot be countermanded by one alone.

Coke lib.  
8 fo. 82

But that which is the last and best authority, is *Vinyors case*; where it is resolved, that though a man be bound to stand to the Arbitrement, &c. yet he may countermand the Arbitrators; the reason that is given is, because a man cannot by his own act make such an authority, power, or warrant; not countermandable which by the law, and in own proper nature is countermandable as if I make a letter of attorney to make livery, or to sue an Action in my name, or if I assigne Auditors to take an account, or if I make one my Factor, or submit my selfe to an Arbitrement

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though that these are done by expresse words irrevocable, or that I grant, or am bound that all these shall stand irrevocable, yet they may be revoked; so if I make my testament or last will irrevocable, yet I may revoke it.

But in this case it was further resolved that by the countermand or revocation of the power of the Arbitrator, the Bond (according to the opinion of *Brooke* before cited) is forfeited, because he was bound to stand to his award, which hee doth not doe when he discharges the Arbitrator. I have sufficiently cleared it, that the authority of Arbitrators is countermandable; but hence arises two questions more, the first is.

*Whether the Authority of Arbitrators be countermandable without Deed, or not?*

The resolving of which doubt I conceive will stand upon this difference, where the submission is by deed, and where without deed; where it is by deed, in such case I conceive the authority cannot be countermand-

49. E. 3. 9; deed but by deed, and so is 49. E. 3. but where it is without deed, there the authority may be countermanded without deed, and this I ground upon that rule of Law, *eodem modo quo quid creatur diffolvitur*. It is but agreeable to natural equity, that every thing should be dissolved by the same meanes or power that it was created.

And in *Vinyors* case which I have cited before, there the submission was by deed, and the countermand pleaded by deed; the second, and last doubt or question considerable in this countermand of the authority of Arbitrators is.

*Whether there ought to be notice of the countermand or no?*

3 E. 4. 10.  
& 11. 2  
1. H. 6.  
o. 28 H. 6  
& 6 H.  
10.  
oke lib.  
f. 8 l. b  
2. a

There must be notice of the countermand, for without notice, it is no revocation or abrogation of the authority, and so it is resolved in the Bookes which you have in the Margent.

*Vinyors* case cited before was thus, he brought an Action of debt upon a Bond

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Bond against *Wilde*, conditioned for the standing to an award, to which the Defendant pleaded that the Arbitrator made no award, the Plaintiffe replied, that after the making of the said writing obligatory, and before the Feast of, &c. the Defendant by his deed, &c. *revocavit & abrogavit omnem auctoritatem, &c.* which he had given by his writing obligatory to the Arbitrator, upon which the Defendant demurred.

Tis true, that in this case it was resolved that the Plaintiffe need not averre that the Arbitrator had notice of the countermand; but the reason that is given, is not because that no notice is requisite, but because notice is implied in these words, *revocavit & abrogavit*, as in the words, *secessavit, dedit & dimisit*, a livery is implied.

But it was resolved that without notice, it is not revocation of the authority; and therefore if there were no notice in this case (saith the Book) the Defendant ought to have taken issue, *quod non revocavit, &c.* and if there were no notice, it shall be found for the defendant. I have done with



the countermand of the authority, the next thing to be considered is.

*What an Arbitrement is ?*

An award, or an Arbitrement, is nothing else but the order, judgement and decree of the Arbitrators upon the matter or thing in controversy, referred or submitted unto them by the parties for their determination, thus in short you see what an Arbitrement is, the next and maine scruple or question will be.

*What Arbitrement is good in Law, and What not ?*

An award, or an Arbitrement may be void in Law, in severall respects, and first.

*Where the award is not according to the submission.*

And this threefold, { persons, things submitted, or the circumstances of the submission.

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And first, an award may be void where it is not according to the submission in respect of the persons; that is where it doth award a thing to be done by, or to a stranger who is not party to the submission.

In 22. H. 6, the case is thus; in debt upon a bond to stand to an award the Defendant pleaded that the Arbitrators did award him to pay 20. shillings to R. a stranger, which he paid, in this case by the opinion of the whole Court, the award was void.

22. H. 6.  
46. 8 E. 4  
1 & 9. 36  
H. 6. 8. ac.

So in 17. E. 4. two submitted themselves to the Arbitrement of 1. S. of all Trespasses, &c. who awarded that the one should pay to the other 40. l. 10. l. in hand, and that he should find three severall sureties, every one of them to bee bound with him in 10. l. to pay the 30. l. residue at a certain day, by the whole Court, the award was void, as to the finding of the sureties which were strangers to the submission.

17. E. 4. 5  
19 E. 4. 1  
18 E. 4. 22  
b & 17 H.  
7 Keilway  
fo 45. pl.

And therefore certainly that opinion in 5. H. 7. cannot be Law, where it is admitted that an award to make a Feoffment to a stranger is good.

Mich. 28. *Moore and Bedels case* was thus. *Bedel* recovered by default in an Action of Wast against *Moore*, 45. l. damages, after which judgement, they submitted themselves to an award, the Arbitrators award that *Moore* should pay to *Bedel* 10. l. at certain daies, and 15. l. at certain other dayes, and that for the payment of 15. l. one *William Salter* should be ready to seale and deliver 15. obligations, &c. and that the said *William Salter* should doe other things not within submission.

Pasch. 24  
of the  
Queen in  
the Kings  
Bench.  
Rot. 24 17

In this case was adjudged, that as to all that was to bee done by *William Salter*, being a stranger to the submission, the award was void, for they are not bound to performe any award but that which is within the submission, so likewise it was adjudged betwixt *Ecclesfield* and *Malliard*, in the Kings Bench.

Trin. 4. of  
the Queen  
Dyer fol.  
216-b

Two submit themselves to the Arbitrement of *A.* who Arbitrates thus, the award of *A.* indifferently chosen by *I.* for the behalfe of the obligor of one part, and the oblige of the other part, &c. the doubt was, whether the award

award were between the parties or no, but it was ruled that it was, because I. was not party to the award, but a deputy or factor, &c.

A. and B. were bound to stand to the Arbitrement of I. S. concerning a matter in controversy which did arise of the part of the wife of B. before coverture, I. S. awarded that A. should pay so much to B. and his wife. In this case, it was moved by *Serjeant Rolles*, that the award of payment of money to the wife was out of the submission, and therefore nought.

Trin. 16;  
Car. in the  
Kings  
bench.

But by the whole Court the award was held good, because it doth appear upon the submission, that the controversy did arise on the part of the wife.

*Secondly, an award may be void, where it is not according to the submission, in respect of the things or matters submitted.*

If one be chosen Arbitrator to make an Arbitrement upon one thing, and he makes an Arbitrement upon another thing, the Arbitrement is void.

pl. Com.  
fol 396.

In the case of *Moore and Bedel*, cited before

before, who submitted themselves to an Arbitrement of all matters of variance betwixt them; the Arbitrators award (amongst other things) that whereas *Bedle* being possessed of a certain Coppy hould, holden of the Mannor of L. in the County of B. had made a Lease for years of the said Coppy hould by Indenture contrary to the Custome, that one *William Salter*, *Prossuo*, should cause that no advantage should be taken of the forfeiture in this case it was adjudged that the award concerning this Coppy hould not being within the submission was void.

7 & 8 of  
the Queen  
Dyer fo.  
242. pl. 52

2 R. 7. 18.  
b 22 E. 4  
25 b.  
Coke lib.  
5. fo. 8, 2

Two submitted themselves by cognizance to an Arbitrement, of the right and interest of 200. Acres of Land, &c. the Arbitrators awarded that the Defendant should have Brakenring his life in the Land, resolved that the award was not according to the submission, because that, that was of the right and interest in the land and the award is onely of parcell of profits out of it.

If I. N. and three others put themselves upon an award of I. S. of another

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Actions and demands betwixt them. In this case the Arbitrator hath good authority to make an award of all joynt matters betwixt them, and of all severall matters also : but hee cannot arbitrate any matter betwixt the three onely, because they are one party against the fourth, but he may determine betwixt any of the three and the fourth.

In 9.E.4. two submitted themselves to the arbitrement of one I. L. De omnibus actionibus personalibus sectis & querelis, &c. betwixt them, &c. who awarded that, because the Defendant had committed divers offences to the Plaintiffe, and that the Plaintiffe was seised of such an house in Fee, that the defendant should release to the Plaintiffe, all the right which he hath in his house, &c.

9.E.4.43  
b.44.c.36  
H.6.8 &  
11. acc.

In this case I conceive the better opinion to be, that the Arbitrement is void, because that the power of the Arbitrator who is a Judge privately chosen by the parties, shall bee taken *stricti juris*, in that thing onely of which the compremise is, and not in another thing ; and here the compremise

mise was but of a thing personall, the Arbitrator hath awarded a satisfaction reall, to wit, a release of a house, which was not comprised within the submission.

And *Littleton* in this case said, if he had awarded that the Defendant should serve the Plaintiffe two years, this would be void.

And by *Cooke* if we put our submission in Arbitrement *de jure, titulo, & possessione Manerii de Dale*, and the Arbitrator makes an award of the Manor of Sale, this is void.

Trin. 3.  
Iac. in the  
Kings  
Bench,  
Rot. 216

*Haynes* against *Arncliffe*, in debt on an obligation to stand to an Arbitrement in all causes that have been depending betwixt the parties, *submissio mand*, the Award is, that the Defendant shall release all causes to the Plaintiffe, from the beginning of the world, *usque &c. Tanfield, Justice*, the award is void, for it is that the Defendant shall release all causes generally; and the submission is of all causes depending then, and so the award is void, and then the obligation not forfeited, *quod Curia concessit*; and judgement was given for the Defendant.



In a Writ of Error upon a Judge-  
ment given in the Common Bench, in  
upon an Obligation, to stand to  
the award of *J. S.* concerning an  
action of account, pending, the Arbi-  
trator made an award touching the  
account; and further awards that e-  
very of the parties should release to  
the other all Actions; the error in  
point of Law was, that the award was  
void, for though the Arbitrement  
may be good in part, and void in part,  
if it be void in any part, the Obliga-  
tion is void; *quod non allocatur*;  
*per Curiam*, when the award is  
made for more then is submitted (as  
in this case) it is good for the thing  
submitted, and void for the surplus-  
age; but if the award be made of  
the thing then is submitted, then it is void  
of the whole.

And divers covenants be, and a man  
bound in an obligation to performe  
them, and some of the Covenants are  
good and against Law, and the residue  
void, yet he ought to performe those  
that are good, otherwise the Obliga-  
tion is forfeited, and this was one *Al-*  
*man Lees Case*, vide 14. H. 8.  
where-

Mich. 7.  
Jac. in the  
Kings  
Bench,  
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Laurence  
& Carre  
case.

An award  
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submitted  
and void  
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Hob. Rep.  
pag. 267.  
Pl. 233.

wherefore judgement in this case was affirmed.

*Goffe* against *Browne*, upon an obligation dated the 23. of *February*, to performe an award of all causes until the day of the Date of the Bond. The Defendant pleaded that the Arbitrators made no award. The Plaintiff replied that the 28. of *March* following, they made an award, *de & super premissis*, that the Defendant should pay the Plaintiff 20. l. at Midsummer following, in full satisfaction of all matters betweene them, and that they then should make the one to the other, generall releases of all matters betweene them, and assigned the breach for the non-payment of the 20. l. The Defendant demurred; because the award did seeme to exceed the submission, being for discharge and satisfaction of all matters to the day of the award, which was more then was submitted, for it may be that the Arbitrators might mean some part of the 20. l. in discharge of the causes that might arise between the 23. of *February*, and the 28. of *March*, which were not within their power.

their power, and so for the release.

Yet the judgment was given for the  
 plaintiffe, either because *de & super*  
*Premissis* may import a restraint to the  
 thing submitted, or else that no new  
 causes shall bee supposed, except they  
 were alledged; \* in pleading of awards \* Coke li:  
 of causes, they need not averre that 8 fol 98  
 these were all, &c. Baspoles  
 case.

There was a case which was be-  
 twixt Robert Tiderby the Father, and Mich. 9<sup>th</sup>  
 Robert Tiderby the sonne, which was lac. in the  
 thus; they bound themselves to stand Kings  
 to the award of J. S. concerning all Bench.  
 controversies, quarrels, and debates,  
 right, title, and possession of, or con-  
 cerning the Mannor of Dale, J. S. a-  
 varded a conveyance of the Mannor  
 of Dale, to certaine uses, and that  
 Robert Tiderby the Father should de-  
 liver all evidences, and charters con-  
 cerning the Mannor.

In this case it was objected that  
 the delivery of the evidences was  
 not within the submission; for they  
 are neither the right nor title, nor  
 possession of the Land. To which it  
 was said that the Charters are the  
 nerves and sinewes of the Land, and  
 therefore

therefore within the words Right and Title, for without the Charters, neither of these can bee maintained also by 8.H.6.& 26. E.4. Where Arbitrators have power over the principall, they have power over the accessory, and therefore the Right and Title of the Land, being put to the award of S. which is the principall, he hath power to make an award of the Charters, which are the accessory.

*Again, an Award may in some cases be void, where it is made of part onely of things or matters contained in the submission, and not of the whole.*

In 19. H. 6. two submitted themselves to an award, upon the right, title, and possession of Land; the Arbitrator made an award of the possession onely; which was objected by *Telverton* to be nought, because it was of parts of the thing in submission onely. But by *Newton*, if two submit themselves to an award of all Actions realls and personals, and an award is made of all Actions personals onely, this is good, and so was the opinion of the whole Court.

In 39. H. 6. by *Priser*, where two

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## Arbitrement.

or three things are put in arbitrement joynely, and an Award is made of part, and not of the whole, this is a void award.

39 H. 6. 9.

And in 23 E. 4. where the submission is of all trespasses, betwixt A. of the one part, and C. and D. of the other part, and an award is made, that A. shall pay 10 l. to C. and saith nothing of D. yet it is a good award: for it may be that A. hath offended C. and hath not offended D.

22 E. 4. 25.  
2 R. 3. 18.  
b. 20.

Which books, and all others to this purpose, must be understood with these differences: First, where the submission is by Deed, and where without Deed: where it is without Deed, there the award may be made of part only, and good.

Coke lib.  
8. fo. 98.  
Bastoules  
case.

Trin. 4. of  
the Queen  
Dyer fo.  
216. b. & 7  
& 8. of the  
Queen.  
Dyer fo.

242. pl. 52

Again, where the submission is by Deed, there is this difference to be observed; where the submission is generall of all matters &c. or in speciall, of some particular things only, with an *ita quod*, or *Proviso*, the award be made *de promissis*; or that the said award be made and given up by such a time: and where the submission is generall or speciall, without

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such a conditionall conclusion. For in the first case the award must be made of all the matters submitted, because of the conditionall reference, & in the last, the award may be made of part only, and good.

So it is (where the submission is not conditionall) in case of diverse particular persons (as the case is put before) if two of one part, and one of another part submit themselves, the arbitrator may make an arbitrament betwixt the one of the two of the one part, and the other of the other part, and good.

But note Reader, that there is a difference to be observed between pleading of an award upon a submission on generall conditionall, and pleading of an award upon a submission speciall conditionall.

For in the first case, if an award is pleaded *de premissis modo & formis contentis*; and alledged to be upon one single matter in controverfie, it is good; because it is shown that the award was made *de premissis*, which doth import an award of all that which was referred to the arbitrament.

Aspoles  
case, ubi  
supra

For; and so it shall be intended, un-  
till the contrary be shewn by the o-  
ther party, for when the submission  
is generall, *Generale nihil certi im-*  
*plicat*; and it may well stand with the  
generality of the words, that there  
was but one cause depending in con-  
troversie betwixt them.

But inpleading of an award upon  
a submission speciall conditionall, there  
the award must be expressly alleaged  
to be made of all things within the  
submission, or otherwise it is naught,  
because upon the very face of the  
award it will appear, whether it were  
made of all things in the submission  
or no. For if the submission be of se-  
veral things in speciall, and an award  
pleaded only of one, it is apparent  
that the award is not of all matters  
contained in the submission.

Again, if upon the pleading of an  
award upon a submission general con-  
ditionall it doth appear, either upon  
the shewing of the other party (as  
 hath been said) or by the award it self,  
that it was not of all matters in con-  
troversie; in such case also, the award  
will be void, though the submission

were generall, because that it was conditionall.

Trin 4. of  
the Queen  
Dyer, fo.  
216.b.

*Mote* and *Meverels* case in my Lord *Dyer* was thus, they were bound to stand to the award of *A.* for Delapidations, &c. and all other suits, quarrels, &c. *Ita quod*, the said award were made, &c. who made an award of the Delapidations, with a protestation that he would not meddle with the rest. In this case the opinion of the Booke is, that the award is nought, for that it did not extend to all the points in the submission, for he made no arbitrement of the suits and quarrels, &c. but made an express protestation that he would not meddle with them; by which he hath disabled himselfe to be an arbitrator in the premises, because that he refused to make an arbitrement according to the submission of the parties, who chose him for to arbitrate, conditionally, *ut supra*: viz. So that the award, &c. which is as well of suits and quarrels, &c. as of delapidations. In this case, though the latter part of the submission were generall, yet because it was conditionall, and it did

appeare

appear by the award it self, that it was not made of all things submitted, therefore the award was held void.

But in this case I conceive, that if the award had been of the delapidations generally, without the Protestation, that it had been good enough, because that the latter part of the submission is general: and therefore if the award had been pleaded *de primis*, and allege the award of the delapidations, it shall be intended that this was all the matter in controversy betwixt them, untill the contrary be shewed.

There is one thing yet in *Baspoles* case worth the noting, which I cannot omit: where it is adjudged, that though there are many matters in controversy, yet if one only be notified to the Arbitrator, he may make an award of this; for the Arbitrator in place of a Judge, and his office is to determine *secundum allegata & probata*; and the duty of the parties which are grieved, and know their particular griefs, is, to give notice of the causes of controversy to the Ar-

Coke lib. 8 fo. 98a.

An arbitrator may make an award of one matter only, if he have notice of no more.

Arbitrator, for they are privy to the matter, and the Arbitrator a stranger, and every one ought to do that which lies in his notice.

And if other construction should be made, most arbitrements might be avoided: for the one might conceal a trespassse done, or other secret cause of action given him, & so avoid the arbitrement, & *expedit recipere, ut sit finis litium*. I shall cite but one case more upon the former ground, and so passe this, which is thus.

Hob. Rep.  
P. 267, p. 134.

An arbitrement seeming do so large as the submission

*Barnes* brought debt upon an obligation against *Greenly*, dated the 4 of September, to performe an award of all causes, till the day of the date: the Plaintiffe pleaded the award *de premissis*, viz. of all causes till the 3 of Decembar, and assignes a breach: the Defendant maintained the Debt, that the Arbitrator made no award, and verdict for the Plaintiffe & judgment: here the award was a great short of the submission. Upon this Writ of Error was brought, but what issue it had, that my Lord *Hobart* saith, he doth not know.

I do conceive Reader, that the defendant

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James formerly taken, will resolve this case; for if the submission were conditionall, then I thinke the award is naught, being not so large as the submission; but if it were absolute in such case I think it good.

But to this it may be said, that the Law will not intend any other matter of controversie to arise betwixt the third of September & the fourth without it be shewn; and for ought appears, the award is of all causes to the fourth of September, because no other cause appears then what is awarded: therefore *quære*.

Thirdly and lastly, an award may be void, where it is not according to the submission in respect of the circumstances of it.

Page and Parkers case was thus, in debt upon a bond conditioned for the performance of an award, so that it be delivered in writing *sub manibus* Page and *& sigillis* &c. the Defendant pleaded Parkers the delivery of it in writing and doth not say *sub manibus* & *sigillis*, and a performance, the Plaintiffe alleadged a breach, and judgment given for him, which was reversed in the Che-

quer chamber, because the Defendant did not plead the award *sub manibus & sigillis*; for if an arbitrement be made according to the submission, it is no arbitrement; if no arbitrement, it is no cause of action.

So in this case I conceive, if the award had been pleaded *sub manibus* and the Queen not *sub manibus & sigillis*, it had been void, as in *Dyer*, fo. nought.

243. pl. 56. So likewise if it had not been pleaded that it was delivered in writing, it had been void.

And where there is a submission to an award, so that it be made and delivered to the parties in writing, at or before such a day: in such case, if it have not all the circumstances, that is, though it be made, yet if it be not delivered; and though it be made and delivered, yet if it be not delivered to the parties, and though it be made and delivered to the parties, yet if it be not in writing; and though it have all these circumstances, yet if they be not all done, at or before the day, in any of these cases the award will be void, as appears by the Books in the margin.

1 H. 7. 52.

7 & 8.

the Queen not

*sub manibus & sigillis*, it had been

*Dyer*, fo. nought.

243. pl. 56

31. H. 8.

Br. arbitr.

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2 R. 3. 13.

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## Arbitrator.

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And if the Arbitrator award any thing after the time limited, it is void.

Two of one part, and two of another submit themselves to an award, so that the award be made and delivered to both parties, &c. A deliverie in this case to one of either party is not sufficient, but it must be to both the entire parties.

The reason of these cases may be, because (as I have formerly said) that it is but a bare power or authority which is given to an Arbitrator, and therefore it must be strictly executed according to the qualifications & conditions annexed to it.

But the reason that comes more close, is, because that the submission is conditionall; *Ido quod*, or *Provisum*, the award of the premises, or the said award, &c. now it cannot be an award of the premises, or the said award, if it be not in every thing, matter, and circumstance, agreeable to the submission. And now I have done this part, of shewing you where an award shall be void, in regard that it is not according to the submission.

Coke lib.  
fo. 103.  
Hungates  
case.

I shall now shew you before I go any further, what I intend by saying that the arbitrement is void, and here upon I shall make this *quære*.

*In what case an Arbitrement shall be totally void, and where in part only.*

And here I shall lay down these three severall grounds or differences, all warranted by our books.

First, where the award is of one single matter only, or of many things, all out of the submission, in such case the award is totally void.

Secondly where the award is of one single matter only, or of many things, all within the submission; yet if it be not of all submitted, where the award is conditionall, or not agreeing in circumstances (as I have shewed you before (or if it be uncertain, impossible, &c. though but in part (as I shall shew you hereafter) in such cases likewise the award will be totally void.

Thirdly and lastly, where the award is of one thing onely, or of several

22 H. 6. 46

36. H. 6. 1

17. E. 4. 2.

pl. com.

fo. 396. 2.

Coke lib. 8

fo. 98.

Baspoles,

case 4. of

the Queen

Dyer, fo.

226. b.

Coke lib.

5. fo. 77.

Salmons

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Rudston.

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verall things, part within the submission, and part out, there the award is void onely as to that which is out of the submission, and good for the residue.

17 E. 4. 5.  
18 E. 4.  
22. b.  
18 E. 4. 1.  
21 E. 4. 75  
17 H. 7.

To these cases that I have cited, I shall only adde one case remembred before, and that is *Cornelius Lawrence* and *Carres* case, which was thus. They submitted themselves to the award of J. S. concerning an Action of account pending; the Arbitrator made an award touching the account, and further award, that every of the parties should release to the other all actions. In this case it was adjudged that the award was good, as to the account, which was submitted, and void for the surplusage. See fol. 9. b.

Keilvay  
43 & 45.  
Moore &  
Bedels  
case befor

But note Reader, that though an arbitrement may be void in part, and good in part, as in the cases aforesaid, yet it cannot be totally void, as to one of the parties to the submission, and good against the other: for as the award must be on both sides (as I shall shew you hereafter (so I conceive the award must be equally and reciprocally

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reciprocally obligatory to both parties; and if it be void against one, it will be void against both.

And I conceive that *Moore* in *Bedels* case cited before, will warrant this. The case was thus, *Bedel* recovered by default in an action of Waste against *Moore* 45. l. damages, and had judgment, after they submitted themselves to an arbitrement, and an award is made that *Moore* should pay to *Bedel* 10 l. at certain dayes, & 15 l. at certain other dayes, and that for payment of the 15 l. *William Salter* should bee ready to seal and deliver 15 Obligations, and the award was of other things all out of the submission: and in consideration thereof, that *Bedel* should discharge *Moore* of 20 l. parcell of the said 45 l. recovered in the said Waste, and that upon the reading of *William Salter* to seal and deliver the said 15 Obligations, *Bedel* should release to *Moore* all actions and demands. &c.

In this case *Moore* brought an action against *Bedel*, & shewed how that he payed the 10 l. &c. and assigned

breach of the award, that the Defendant had not made the release upon request.

It was resolved, that though that many things are awarded to be done in satisfaction of another, (as in this case) and some are within the submission (as here the payment of the money) and some out (as in this case, all to be done by *Salter* being a stranger) and so void; and though that all were intended by the Arbitrators to be one full and entire recompence for the things, that the other should be in consideration of this (as here the discharge of the 20 l. and the release by the Defendant) notwithstanding if any thing to be done or be given to the party, though that it be of small value be within the submission, the award is good; so in this case judgement was given for the Plaintiff.

In this case it is apparent, that if what was awarded on the Plaintiffs part, had been all out of the submission, and by consequence void, that the Defendant in such case had not been tyed to perform what was awarded

awarded on his part, for an arbitrement void against one, is void against both.

Hil. 14.  
Car. in  
the Kings  
bench.  
Rot. 113.

*Rudstone and Yates's case* cited before: an Infant and one of full age submitted themselves to an award, it was adjudged that the submission, and by consequence the award, was absolutely void as to the Infant; and being void as to the Infant, that was likewise void as to the man of full age; for that the award ought to be equally binding.

And now I have shewne you where an arbitrement shall be void in the whole, and where in part only: It will be necessary that I shew you, where a bond for not abiding such an award shall be forfeited, and where not.

*Where an Obligation shall be forfeited for not performing of an Award which is void in part, or in the whole and where not?*

The Law as to this, takes this difference, betwixt an award void

the whole, and an award void in part only. Where the award is totally void, there the bond can never be forfeited or the non-performance of it : because that a void arbitrement and no arbitrement, are both one in the judgment of Law.

And therefore no more then a **Coke lib.**  
 bond can bee forfeited, where there **10. f. 13 b.**  
 is a void award made. For as **7 H. 8.**  
 in the first case, he cannot observe **Keilway,**  
 that which is not; so in the Last, the **fo. 175 a.**  
 Law requires not the observation of  
 that which is void.

As for the Book in **22 Hen. 6**  
 where there was a submission by  
 bond, and an award to pay 200. to  
 a stranger ; and it is there said, that  
 the judgment of the Court was,  
 that though the award were void, yet  
 it ought to be performed by reason  
 of the bond; for otherwise the bond  
 is forfeited : and therefore saith the  
 book ; the Plaintiffe traversed the  
 award, *quod mirum* sayes **Brooke** for  
 this is no award between the Plain-  
 tiffe and the Defendant,

**Well**



Well might he wonder at it: for deed; for certainly, this cannot be Law: but because it is sufficiently ratified by the Lord Coke in his book, the place cited before, I shall thus passe it. But now on the other side, where the award is void in itself only, there the bond may be forfeited for not observing the award, for as much as is within the submission, though not for that which is not contained in the submission: and therefore if a breach be assigned in that part which is void, the action will not lye.

Mich. 41;  
 42. of  
 the Queen  
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 Pleas,  
 18. E. 4 fo.  
 22. b. 23. a.  
 Stiles case  
 41 & 42. of  
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In *Emery and Emerys* case cited before. *Glanville* cited a case between *Hellier* and *Rendale* in the King's Bench, in which he said, he was in the Countee, where the Plaintiffs assigned his breach at a void matter, and after verdict for the Plaintiffs, which was spoken in arrest of judgment, and judgment *quod quer. nihil* was given *at per billam*. But now a breach be assigned as to that which is within the submission, and the bond forfeited for it.

In 18. E. 4. it was awarded that one of the parties should pay the award

to the other 10. l. in hand : and that  
he and three others should be bound  
for the payment of the thirty pound  
residue. In this case by *Brian, Neale,*  
*and Ghoke*, though that the award be  
void as to the strangers, yet it is not  
void as to the party which submitted,  
but he must plead the award *verba-*  
*tim*, as the Arbitrators gave it, and in  
performance of it, he must say, that he  
himself was bound for the payment  
of the 30 l. rest at a day, and shall not  
speak of the sureties.

So in *Cornelius Lawrence and Carr* Mich. 7<sup>th</sup>  
cited before, it was adjudged, lac. in the  
Kings Bench,  
that where there is an award of more  
than is submitted, it is good for that  
which is submitted, and void for the  
surplusage, and that the bond is for-  
feited, for not performance of that  
which is within the submission. See  
adgment p. b.

In 17. H. 7. by *Yavisor* and *Fro* 17 H. 7.  
each of them. If *A. B.* be bound to stand to Keilway. f.  
an award of certiane persons of, &c. 47. pl. 10.  
toward that the said *A. B.* and *E.* & 45. pl. 2.  
his wife shall levie a fine of the same  
to the other party, though that  
the award be void as to the wife of

In *Osburns* *A.B.* yet the said *A.B.* is bound up  
 case *Coke* on paine of forfeiture of his bond, to  
 lib. 10. do it. And agracing with these cases,  
 13 1. b. is *Moore* and *Bedels* case so often re-  
 membered before.

And we must observe, that when  
 a man is tyed by promise to stand to  
 an award, it will be the same with the  
 Obligation, as to those things before  
 laid downe, as you may see in *Moore*  
 and *Bedels* case.

And now having declared unto you  
 in what case a bond shall be forfeited  
 for not performing of an award, and  
 in what not. It will be necessary in  
 the next place (before I proceede) to  
 cleare the point of notice of the arbi-  
 trement; that is,

*Whether the Compromitters who  
 have bound themselves to stand  
 to an Award, are bound to  
 take notice of it at their  
 own perill or not?*

3 E. 4. 1.  
 10. 13. &  
 21.

This very point is as much contro-  
 verted and debated in 8 Edw. 4. the  
*Dutches of Suffolks* case, by all the  
 Judges in the *Chequer Chamber*,

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it is possible for a case to be: and there is as much variety of judgement and opinion in it, as ever I met with in any one case of the Law.

And though I do conceive the better opinion in that case to be (for it is not resolved) that the party who hath bound himselfe to stand to the award, must take notice of it at his own perill: Because as *Catesby* saith excellently well, though that a man by reason shall not be compelled to do a thing without having notice of it, yet a man may binde himselfe by his deede to doe a thing, the which by reason he should not be bound to do.

Yet I conceive the judgement of these learned men, viz. *Fairfax*, *Starkey*, *Telverton*, and others, ought not to be so undervalued, especially upon no lesse then foure severall debates of the point, as to be called a sudden opinion, as it is in *Fraunces* case in my Lord *Cokes* 8. booke. But for the Law in this point, certainly it is now settled and in peace, that the Compromittor must take notice of it at his own perill, having bound himself to stand to and observe the award.

Coke lib.  
8. f. 92. b.

1 H. 7. f. 5

In 1 Hen. 7. the opinion was cleare (saith the booke) that the Obligor ought to take notice of the award at his own perill, because he hath bound himselfe so to doe.

18 E. 4. 18

a.

And in 18 E. 4. by *Brian, Vauise* and *Catesby*, Justices; where an award is made, the party ought to take notice of it at his own perill, and they say, that so it was adjudged in the time of the same King, in the Kings Bench.

Coke li. 4

fo. 82. &amp;

lib. 8. fo. 9.

b.

Which cases are agreed for Law, in my Lord *Cokes* 4 booke, as also in his 8 Booke, *Fraunces* case, where it is said, that so is the Law without question.

And the reason given there is, because when a man binds himselfe to doe, or performe any thing awarded by a stranger, he doth by this, take notice at his perill, of all things incident to this, for the saving of his obligation.

7 H. 8.

Keilvay

f. 175. pl. 8

And therefore we may safely conclude, the Booke in 7. H. 8. where there is an opinion to the contrary to be no Law: but of this sufficient I shall now proceede to shew you

what

what respects, or for what other reasons an award may be said to be void in Law: the first ground I laid down, was where the award is not according to the submission, the next shall be the uncertainty.

*Where an award shall be void in Law, for the uncertainty.*

In all cases where the award is uncertaine, it is void: for the Arbitrators (as I have shewed before) are Judges, and their judgement must be certaine; for *judicium debet esse certum*. And the Law doth in all cases abhorre uncertainty, because it is the mother of confusion.

*Samons case*; the Arbitrator awarded, that the one of the parties should enter into a bond to the other, and doth not award in what summe the bond shall be, adjudged void for the uncertainty.

For as the Book saith, the Arbitrators are judges of the case, and their judgement awarded, ought to be certaine, so that by this the controversie be decided, that it may not bee the cause

Coke lib.  
5. fo. 77. b.  
& 78. a.

cause, through the uncertainty of new  
controversie.

Mich. 41  
Jac. in the  
Kings  
Bench.  
Ret. 32.

*Marcham and Jennings's case*, in  
debt upon an Obligation, to stand to  
the arbitrement of *Poly* of *Grayer*  
*Inne*, for the Title of *Coppy* hold in  
question betwixt the parties; *Poly*  
awarded that *Jennings* should pay to  
the Plaintiffe 20 marks, viz. 6l. 13 s.  
4 d. *super viccesimum primum diem*  
*Maii*; and 6l. 13s. 4 d. at the Feast  
of *St. Michael* next following: and  
that the plaintiffe should release to  
the defendant all his right in the *Cop-*  
*py* hold, *super predictum primum diem*  
*Maii* (omitting *vice finum*) where  
there was no first day named before.

The Defendant pleaded, that there  
was no award made: the Plaintiffe  
replied That there was an award  
made, and sets it forth; and that the  
Defendant hath not paid the 6 l. 13 s.  
4d. upon the first day of *May*; the  
Defendant demurred, intending that  
the arbitrement was void for the un-  
certainty, viz. in that it was to be  
paid *super predict. primum diem Maii*,  
where there was no first day named  
before. *Tarfild* Justice, the arbitre-

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ment is void in the whole, because that the day to which the release is referred to be made is uncertaine, and so it doth not appeare when it shall be made: and for that it doth appear, that the intent of the Arbitrator was, that it should bee made at a day certain, and this is not certainly expressed, it is void. And though that the arbitrement consists upon divers parts, and some are certain, yet if any part be uncertain, all is void, if it be materiall and concern a party to the submission, as heere it doth. And it is not like the case of 19.E. 4.1. for there the award which was void for part, that part concerned a stranger not party to the arbitrement, but here it concernes both parties to the arbitrement. And though that there be another clause, that the Plaintiffe shal make further assurance; yet his intent was, that the other should be also done: and because that that is void for the uncertainty, all is void: for an award is like a judgement; which if it be imperfect in any part, it is void for the whole; and atter, judgement was given for the Defendant.

Note here *Reader*, that if an award be made of severall things, all within the submission, if it be uncertaine in part only, it is totally void, which doth agree with the differences which I have formerly laid down.

8 E. 4. 11<sup>a</sup>

In 8.E.4. cited before, by *Yelverton*, if an award be made, that an action shal be conceived between the parties, by the advice of S. and F. the award is void : because, saith he, every Arbitrement ought to be full and certaine, and so it is not here, untill the said S. and F. limit the action.

I must confesse the greater opinion in this case is, that the award is good; but I conceive the opinion of *Yelverton* (as I formerly said) to be the better opinion; because the judgement of Arbitrators ought to be final (as I shall shew you hereafter) and nothing ought to be referred to the judgement of other persons, or to the Law : for by the submission (which must be their rule) they themselves are to end all suits and controversies betwixt the parties ; and if they doe not, their award is not according to the submission, and therefore void.

*Rudston*

*Rudston* and *Tate's* case (which I have put often before, though to other purposes) was thus: an Infant and a man of full age submitted themselves to an award; the Arbitrators award, that the Infant should pay 5 l. to the other party, for *quit Rents, and other small things, &c.* Tis true, that in this case it was adjudged (as I have formerly said) that the submission of the Infant was absolutely void. But it was also adjudged, that the award in this case was void, because of the uncertainty of those words, *other small things*, it not appearing what those other things were: and it may be they were such things, for which an Infant by the Law may not be chargeable: and by the same reason they have assessed 5 l. they might have assessed 20 l.

Here likewise note Reader, that the award being of things within the submission, was adjudged totally void for the uncertainty of part only.

Two submit themselves to the award of I. S. who awards, that one of the parties should pay a certaine sum to the other, and that the other

Hil: 15.  
Car. in the  
Kings b.  
Rot 13  
8 E. 4. I.

Pasch. 15.  
Car. in the  
Kings b.

in

in consideration of this, should discharge him of a bond in which they two were bound to a third person in an 100. li. *ant eo circiter*.

In this case it was objected, that the arbitrement is void, because the Arbitrators have arbitrated a thing uncertaine; by reason that it doth not certainly appeare of what summe the bond was in which they were bound, and the *eo circiter* is utterly uncertaine.

But the opinion of the whole Court was, that there was a sufficient certainty; because that lyes not in the power of the Arbitrators to know the direct summe, and a small variation is not materiall, and therefore the award was held good.

**Hob. Rep.** *Nichols and Grummons* case, then the Arbitrators award, that one of the parties should pay 3 l. 10 s. to the other, and doth not say for what; so that it may appear whether it concerned him or no; it was held void for the uncertainty. And if this should not be void, it might be very mischievous to the party, for by this means he might be doubly charged. For

an action brought for the same thing, for which this money is awarded to be paid, I doubt the arbitrement could be \* no plea in bar of the action; because it cannot appeare, whether it were for the same thing or no. And the averrement of the party can never declare the intent of the Arbitrators, and so help the uncertainty or other imperfection in the arbitrement, as is agreed in this case and resolved also in 7 and 8 of the Queen, *Dyer*: and *Girling* and *Gosnolds* case, here immediately following.

*Girling* and *Gosnolds* case in the Kings Bench was thus: debt was brought upon a bond for not observing of an award; which was that the Defendant should pay to the Plaintiff 20 l. *per annum*, during the continuance of two leases for yeares being, of the Parsonage impropriate of Yarmouth, &c. and it was not shewne in the award for what term the leases were; but the Plaintiff shewed for what terme they were; and the continuance of them; and alledged a breach for non-payment of the 20 l. &c.

\* *Tamen quare*, because  
Hob. Rep  
*ubi supra*  
seemeth  
contrary.  
An aver-  
ment of  
the parties  
cannot de-  
clare the  
intent of  
the arbi-  
trators.  
Mic. 7 & 8  
of the  
Queen.  
*Dyer* so.  
242. pl 52  
Pasch. 4.  
Iac. in the  
Kings B.  
This case  
commen-  
ced Pasch  
3 Iac. Rot  
478.

In

In this case it was objected, that the award was void for the uncertainty; because that it did not expresse for what time or tearme the leases for yeares were, and that it could not be aided by the averment of the party: and for the uncertainty *Samons* case was cited, for the averment, my *L. Dyers* case which I put you before.

But by *Popham* Chief Justice, the award is good: he agreed that where the award is uncertaine, it is void, and that the parties can never aide by an averment; to shew the intent of the Arbitrators, if it be not expressed in the award, ether directly, or by circumstance.

An award  
which  
refer, or  
may be re-  
duced to a  
certainty,  
is good,

But he said, that if *Samons* case in *Cokes* 5. Book had been, that the party should be bound in such a sum, he was bound in to stand to the award, or by other reference, so that it might be reduced to a certainty, and thus fallibility; in such case the award had been good.

And in this case the payment of the 20 *l. per annum*, is referred to the continuance of the leases, which

certainty

ed, the certain; and therefore he conceived  
s more the award to be good. Of the same  
not opinion were *Williams, Tolverton*, and  
rme *Tenfield*, Justices.

that Here Reader you may observe that  
errem an award which is referred, or may  
certain reduced to a certainty, is good e-  
the ave nough agreeing with that rule in law  
ch I *certum est, quod certum reddi potest.*

o This shall suffice to shew you in  
ice, what case an award shall be void for  
at wh uncertainty. The next thing confide-  
is you able is,

he inte *Where an Award shall be void in Law,*  
t expre *for impossibilities.*

ly, or Wheresoever the Arbitrators a-  
r case ward a thing impossible to be done,  
the p in such case the award is void, and by  
a sum, consequence the bond not forfeitable  
he aw for the non-performance of it, (as I  
it mi have shewed before) for it were a  
d thin most unjust and unreasonable thing  
e' aw or to make a man incur a penalty,  
or the not doing of that which is in  
ymen t be impossible to be done.

ed ro In 8. E. 4. by *Tolverton*: if an arbi-  
which ment be made to doe a thing im-  
certain possible,

8 E. 4. 10.



possible, the party for the non-performance of this shall not lose his Obligation, notwithstanding that he be bound to stand to the Arbitrement, because he cannot by any possibility doe it.

As if they award that I shall make the Thames to run over the seller of Westminster within a day: or that I shall pull down *Pauls* steeple with my hands within an hour, or the like impossibilities; because I cannot performe it, I am excused of my obligation.

8 B.4.1.b  
& 12.b.  
9 H.6. 16.  
by Keble  
19 E.4.1  
by Nele  
& 22.H.6  
46.ac.

So in 8.E.4. by *Moile*: if the arbitrators award a thing impossible, if I put my self upon an arbitrement this day, and they award, that I shall pay a sum certain at a day which was before the submission; I shall not forfeit my Obligation for the non-performance of this arbitrement, because that it was impossible to be performed.

21 E 4i48  
a.

In 21 E.4. by *Genney*: if an award be, that I shall release all the right which I have in the Mannor of *L.* in the County of *M.* to *Pigot*, or leave a fine to him; and in truth there is

such Manner ; this award is void, because it is impossible.

So if the award be, that he shall release his suit against B. and he hath no suit against him, this is a void award.

But note Reader, *Where the thing awarded is in it selfe feasible and possible to be done, though in relation to him that is to do it, it may not be possible; yet because it carries with it no apparent impossibility, the award in such case is good.*

If the Arbitrators award, that hee shall pay a 1000. Marks presently, he is bound to do it : and it is the folly of the party to but such confidence in the parties that are chosen arbitrators.

So they may arbitrate things, the party cannot doe (which are the very words of the Booke) as that the Defendant shall pay 10. l. in money, where peradventure hee never had good. Or that he shall pay 20 Tunnes of Wine, or the like ; where he hath not one : in these cases the award is good.

In debt upon a bond, to stand to an award,

award : the Defendant pleaded, that the Arbitrators did award that the Defendant within eight dayes after the award, would goe to the house of Sir Henry Collet, and that he should bring a bale of Woad, &c. and the Defendant saith that there was not any bale of Woad in the house of the said Henry Collet, within eight dayes after the said award.

By *Keeble* this plea is not good, because he hath bound himselfe to stand to the award, and to perform it, which he must do, otherwise his obligation is forfeited. Besides, this is a thing feasible, for though Sir Henry Collet had not any bailes in his house, if he would have performed the condition, he ought to have bought certain bailes, and to have brought them to the house of Sir Henry Collet, &c. and then departed, &c. and because he hath tyed himselfe to performe the arbitrement, he ought to do it, if it may be by any possibility done.

The reason of all these cases is, because it is the folly of the parties to make choice of, and to put so great confidence in such persons, whom they

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they chose to their arbitrators, and it is no newes that a man should suffer through his own folly.

Againe, where the thing awarded is in it selfe possible, and possible also to the party who is to do it, yet,

*Where the thing awarded lies not in the power of the party himselfe,*

*without the aide of a third*

*person, in such case, the*

*award is void.*

Two submit themselves to an arbitrement, the arbitrators award that one of them shall make I. S. to pay 20. l. to the other, the award is void: because in this case it lyes in the will of I. S. whether he will do it, or no, and the party hath no meanes to enforce him.

Two submit themselves to the award of I. S. who doth award one of the parties to pay to the other 40. l. 10. li. in hand, and for the 30. l. residus that he finde three severall persons to be bound every one in 10 l. to the party.

In this case by the opinion of all the Justices, the award was void.

P

And

8 E. 4. fol.  
2. a by  
Yelverton  
22 H. 6  
46. ac.

17 E. 4. fol.  
5. b. 19. E.  
4 fo. 1.

And there it is said that in an arbitrement the Law intends; that the arbitrators should be indifferent and equall judges betwixt the parties but what indifferency is this, to cause a man to make such a thing to be done, which lies in the will of a stranger whether he will do it or no.

As put the case (saith the book) that an arbitrator will award that I must cause the King to give the tower of London to the other, such an award is clearly void.

And by *Brian* in 19 E 4, an arbitrement that the party before such a day shall \* levie a fine before us, is good; but if the arbitrement be, that he shall command us to sit here, and to make him levie a fine, this is void, for he hath not power to do it.

So in 5 H 7. an award, that the parties shall discontinue and make Retraixits of their suits, is good: the reason of these cases, I conceive may be, because that though these things cannot be done without the act of Court, yet heere is concurrence of the act of the party also, which doth produce the act of the Court.

19 E 4, f. 1  
5 H 7.  
22 b. ac.  
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5 H 7, ubi  
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21 E. 4 36  
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And *Huffey* Chief Justice in 21 E.  
4. takes the true difference, sayes he  
there where the act may be done by  
my selfe, without the aid of a third  
person, in such case I ought to do it;  
but where it cannot be done without  
the aid of a third person, there it is o-  
therwise.

There was a case which was 15 of  
this King, which I cited before to  
another purpose, which was thus; an  
award was made, that one of the  
parties should pay a certain summe  
to the other; and that the other in  
consideration of this, should acquit  
him of a bond, in which they were  
both bound to a third person in a  
fool. &c.

Pasch 15 i  
Car. in the  
Kings  
Bench,

In this case, the award was held  
good, and this diversity was taken by  
the Court, where the arbitrators arbi-  
trate a party to do a thing which lies  
in his power without the aid of a  
third person, there the award is good;  
otherwise, where it lies not in his  
power without the aid of a third per-  
son.

And here it was agreed that the  
thing awarded was feasible by the

party himselfe, without the aid of the obligee, and this difference was taken by the Court, where the bond was forfeited, and the penalty incurred, and where not; where the day of payment was not incurred, there the payment of the Money at the day would bee a good discharge of the bond, and by consequence a good acquittall of the party, but where the bond was forfeited, there it could not.

And *Jones* Justice said, that he might compell the obligee upon payment of the money, though the bond were forfeited, to deliver the bond by *subpoena* in Chancery; or that he might suffer an action to be brought against him, and then discharge and pay it.

17.E.4.fo.  
5.b.

According to the opinion of Justice *Jones* in his former case it was ruled, that where arbitrators doe award, that whereas such a one was seized to my use, that I should cause him to make a release to the other being in possession, that the award was good; because that I have such an interest & power that I may compell my feoffees to do it by *subpoena* in the Chancery.

Thus

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Thus you see, that where I may do the thing awarded my selfe, without the aid of another, or may inforce it to be done, in such case the award will be good : the next thing to be considered is,

*Where an Award shall be void by reason of the not indifferency of it, or because it is made of one side only.*

As Arbitrators are indifferently elected, so the Law intends (as it is said in 17 E. 4.) that the arbitrators should be indifferent and equall Judges between the parties, which they cannot be, if they do not give satisfaction to both sides, and therefore in such case, where the award is not mutually satisfactory, it is void.

It was an ingenious saying of Hearn in *Emery & Emeryes* case cited before; arbitrators saith he, are indifferently chosen, so that both the parties may have recompence in regard of their Bond, which is *equale pondus* to both : and an arbitrement, saith

he, is like a fine, wherein the Judges are arbitrators, one hath the land, & *pro hac concordia*, the other hath money.

7 H. 6 fo.

40. by

Strang,

20 H. 6. 19

2. 20.

If the defendant plead an arbitrement made betwixt him and the Strang, plaintiffe of all quarels betweene them, &c. who award that the defendant should goe quit of all actions and quarrels had by the plaintiffe against him; and nothing is spoken of the quarrels which the defendant hath against the plaintiffe, the arbitrement is voide.

29 H. 6.

by discot

So, if two submit themselves to an award of all Trespasses, and an award is made, that the one shall make amends to the other, and nothing is awarded that he shall do to him againe, this is a void award, because all is for the one party, and nothing for the other.

12 H. 7. 14

15.

In Trespasse for taking away of goods, the defendant pleaded an arbitrement, which awarded, that because the defendant had taken away the goods of the plaintiffe, that he should re-deliver them in satisfaction of the Trespasse, which he did.

and there by the better opinion the plea is nought, because that re-delivery of his own goods, can be no satisfaction for the taking and detaining of them.

An Arbitrement is no plea in trespassse, if the defendant doe not say that the arbitrators awarded that he should give something to the Plaintiffe more, or lesse, in satisfaction; for that is a satisfaction to neither side; the Plaintiffe is not satisfied for the trespassse done him, nor the defendant discharged thereof without some satisfaction for the wrong done by him, 43 E3. 18

In trespassse for goods, the defendant pleaded an Arbitrement that he should retain part of the goods, and should deliver the rest, which hee hath been alwaies ready to deliver, and demands judgment, this is conceived to be no plea; and this case was put, in debt of 10 l. the defendant pleads an arbitrement that he should pay part, and not the rest; or to pay the moiety and retain the other moiety, this no plea, 45 E3. 16

Tis true, that *Brooke* makes a *quare* Br. R. Arbitrement of 7.

of the case, because it was not adjudged; but withall concludes, that it seemes it is no plea: and certainly so is the Law. For if an award for the re-delivery of all the goods could be no plea, because no satisfaction (as the cases in 12 H. 7. cited before) much lesse an award, for the re-delivery of party only: for this is no other then to endeavour to satisfy one wrong with another.

9 H. 7. 16.

For the latter case, as it is said by *Keble*, in 9 H. 7. that it is against the Law for the Arbitrators to award the party to pay more then of right he ought to pay. So certainly it is as much against the Law, to award the party to pay lesse then of right he ought to pay, for there is no equality nor satisfaction for that which is more or lesse in either case.

Hob. Rep.  
pa. 68. l. p.  
44.

*Nichols and Grummons* case, cited before: there was an award, that the Defendant should depart from his house, wherein he dwelt, &c. and should pay 3 l. 10 s. to the Plaintiffe, and it doth not appeare for what, &c. In this case it was adjudged, that the award was void, because it was of

one

one side only. But now, where there is either an acquittall or an expresse satisfaction on both sides, or of one side only, with an implied discharge of the other, in such case the award will be good.

It is a good award, that because the one party hath done more trespassse to the other, then the other to him, that he shall give a penny in satisfaction, and that the other shall be quit against him.

An arbitrement, that the one hath done trespassse to the other, and that the other hath likewise done trespassse to him; and therefore that the one shall be quit against the other and that the other likewise shall be quit against him, is a good arbitrement.

In trespassse for the taking away of goods, though an award that he shall deliver the goods to the plaintiffe in satisfaction be no good award, as by *Koble* and *Tremaile*, if the award had been that he should carry them from such a place to such a place at his own costs, this had been good.

**And**

19. H. 6.  
37. 20. H.  
6. 19. 22.  
H. 6. 39. 9.  
E. 4. 44. a.

22. H. 6. 39  
19. E. 4. 8. a  
10. H. 6. 14  
19. of the  
Queene.  
Dyer fo.  
356. a. pl.  
39

12. H. 7. 14  
b. 15. a.

And by *Kehle*, if a man take a horse from me, and we put our selves upon arbitrement : in this case, if the arbitrators award that he shall keep the horse untill the Feast of Easter and then to deliuer the horse; this is a good award, for he shall be charged with the meat of the horse, which is my profit and a vaille to me; and I am not charged of the keeping and the meat of the Horse, which is my profit,

Thus you see, *That a small or few expresse ing satisfaction, only so the award be to the satisfaction of both sides, may be good enough.* So *Dyer* it is said, that there must be something done by either party or the other, commodious in appearance at the least.

The reason of these cases, may be because that the arbitrators are made judges of the matters in controversy between the parties : and therefore where the submission is of things uncertain, as trespassse, or the like in such case if the Arbitrators should adjudge the offences to be equal where they are not so, and so a mutual discharge on both sides : or should award the payment of 10l, when

there was not 5.s. damage; or but a penny, where peradventure there might be 10.l. damage. In such case there is no remedy, because you have made them your Judges, and tyed your selfe to stand to their judgment. Otherwise it may be where things certain are submitted, as debt, or the like, as I have shewn you before:

And now I shall put you a case or two to the former, where there is an expresse satisfaction of the one part, and an implied discharge of the other only, and yet the award good.

An arbitrement, that the defendant shall pay a penny to the plaintiff, in satisfaction of all manner of actions, which he hath paid, is a good barre.

*Nichols and Grammons* case cited before, if an award be, that an obligor in a single obligation shall pay the debt, this is a void award, without there bee a provision for his discharge; because payment is no discharge in that case without an acquittance.

But if the award be, that he shall pay 10.l. for a trespassse, it is good: because

22H.6.39  
by Moile.

Hob. Rep.  
p<sup>68</sup>.pl<sup>54</sup>

22 E.4.25  
ac.



Coke lib8  
fo 68. a.  
Bathpokes  
case.

because a satisfaction implyes discharge.

So an award, that the defendant shall pay a debt that was due to the plaintiffe, which he also promised to pay, is good; for there the award is as well of the one side as the other because the one receives the money and the other is discharged of the debt and of his promise to pay it.

Thus you see, that where an award is expressly of one side, and implyes only on the other, that in such case the award is good. The next thing to be considered is, that though the award be on both sides, yet,

*Where there is no meanes by Law for either party to attain unto that which is awarded him, the award is void.*

21 H 6,  
12 13 b,  
et 19, a.

In trespassse, the defendant pleaded an award, that the Plaintiff should pay to the Defendant 10 l. and release to him all actions of trespassse & after the Defendant should release to the Plaintiffe all trespassses, which he was alwayes ready to doe, and

yes if the plaintiff had paid the 10 l.  
and released. In this case this was  
held no good plea; because, that if  
the plaintiff had paid the money and  
released, he could have had no reme-  
dy to enforce the Defendant to have  
released; and therefore this award is  
no bar of the Action.

So in a Writ of forger of false Deeds, 19.H.6.37.  
the Defendant pleaded an Arbitre- b.38. a  
ment, that the Plaintiff should be non-  
sued in that Writ; and that the De-  
fendant who hath an assize against  
the Plaintiff, should be non-suit in  
this, and saith, the day is not yet come,  
and demanded judgement: in this case  
the plea was held nought, because,  
that if he had been non-sued in this  
Action, he had no remedy by specialty,  
or otherwise to enforce the Defendant  
to be non-suit in the assize.

And here *Newton* said, should this  
be a good plea in a Writ of forger of  
false Deeds for the Defendant, to say  
that there was an award, that the  
plaintiff should have an acre of land  
of the Defendant in amends: I say  
saith he) that it could not, if he doth  
not say, The which he hath convey-  
ed

ed to him; for there is no remedy in this case to constrain him to convey it to him.

If an arbitrement be that the defendant shall be bound by such a day which is not come, he shall not plead this in an action of trespassse, for the plaintiffe should be barred, and should have no action to compell the defendant to make the Obligation. Note Reader, that these cases must be intended where the submission is without specialty, otherwise he would not without remedy.

In this case there are these three grounds observable, and warranted by the books, First, where the award is for payment of money at a day to come, the award is good, because an action of debt will lye for the money upon the arbitrement if it be not paid, or the party may resort to his action againe, if he please.

Secondly, though the award be of a collaterall thing for which there is no remedy, yet if it be executed, it is good.

Thirdly, and lastly, where the award is

28. H. 6.  
12. 2 H. 4.  
4. 5 H. 4.  
19. E. 4.  
20 H. 6.  
Keilway  
121 a  
19. H. 6.  
38. a. by  
Nuton p.  
5. 28.  
19. A. 6.  
37. by A.  
cue &  
Nerton  
E. 4 44.  
by Ned.  
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# Arbitrement.

219

of a collateral thing not executed; yet if the submission be by specialty, the award is good.

Upon these grounds you may observe these four rules to direct you, where an arbitrement shal be a good plea in Barr of an action in these cases.

First, Where the award is for the payment of money, for which you have remedy and the day of payment not past; in such case the award is a good plea in bar of the Action.

20. H. 6. 18

19. 28. H.

6. 12. 2. H.

4. 4. 9. B. 4

5. 1. 5. B. 4.

7. 19. E. 4

8. 45. E. 3.

16. & 20.

H. 6. 12.

Secondly, Where the day of payment is past, it is no plea in Barr of the action without pleading of payment.

Thirdly, where the day of payment is past, yet if there be no default in the defendant; in such case, I conceive, the arbitrement not executed, is a good plea in bar of the action.

20. H. 6. 18

Br. Arbitrement. 38

2. H. 4. 1.

Fourthly, and lastly, Where the award is of a thing for which the party hath no remedy, though the day be not come, in which the thing ought to be delivered, in this case the award is no Plea in bar of the action. According to these differences it hath been ruled in a case in the K. Bench, which was thus.

19. H. 6.

37. 31. E. 4

7. 2. H. 4

41.

The

Mich. 9.  
Iac. in  
the Kings  
bench.

The defendant in trespass pleads an award that he should instantly pay 20 s. to the plaintiffe, and so demanded judgement of the action: *Flemming* Chief Justice, *Williams* & *Crooke* Justices, it was holden, that the plea was nought, because that he did not shew the money was paid, & these differences agreed.

An arbitrement pleaded in bar of an action, where the defendant has not performed the thing, and the day past, is no good plea. But where the day of the performance of the thing awarded is to come, and the doing of the thing awarded may be compelled by action, there the arbitrement is a good plea in bar of the action.

And by *Flemming* if the arbitrement be to make a release, or for any other collaterall matter, which the defendant cannot be enforced by action to doe, in such case the arbitrement is no good plea in bar of the action, though the day of performance be not yet come.

And you must know Reader, that where the arbitrement is to make a release,

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Release, or such other collaterall thing, and the day to come, though the submission were by specialty, yet the award would be no plea in bar of an action; because that cannot enforce the doing of it, though it may be forfeited for the thing not done.

And so saith *Nedham* in 9. E. 4. 9 E.4.44, though the arbitrement bee voide to this intent that the plaintiffe hath no action to compell the Defendant to make the release; yet it is good to this intent, if the party doe not performe it, that hee shall forfeit the penalty of the obligation. But enough of this, the next thing considerable, is,

*Where an award shall be void because it is not final.*

The arbitrators (as I have often told you) are Judges of the matters in controversie referred unto them, and their award is a judgement: now *judicium*, must not onely be *certum* (as said before) but *determinatum* also, it must determine the matter in controversie.

T9H.6.36

Tis true, an award may in such cases (as I have shewed before) be good of part of the things only submitted; but we must understand this so, that the award must bee finall as to that part; or else it will be void.

An award that either party shall be Non-suit against the other in actions commenced by them is void; because it makes no end of the matters in controversy.

And every Arbitrement, saith the Book, ought to make an end and final determination of the things in dispute and controversy; which it doth not in this case, because that notwithstanding the Non-suits, they may commence their Suits, *de novo*.

3.H.7.fo.  
23.

And upon this ground, as also the former authority, I conceive that the Booke in 5. H. 7. is no Law; when there is an opinion that an award of a Non-suit may be good, but it is upon this reason, because it is not only the act of the Court, but the act of the party also. But if it were wholly the act of the party, yet for the reason before given, because it is no final conclusion, I conceive it cannot be good.



for this is but like blowing out of a candle, which a man at his own pleasure lights againe.

So in all those cases that I have put you before, where the award is of one side onely, it is void also for this reason; because it doth not determine the controversies between them, and the controversies cannot be ended, without they be ended in respect of both parties.

So likewise in the cases that I have put you before, where the award is uncertain, it is also void for this cause, that it is not finall. For an uncertain award cannot decide the matter in controversie, but is more apt to get new strifes and variances, then conclude the old.

In 8 E. 4. an award is made, that an action shall be conceived betwixt the parties by the advice of S. and F. Doe conceive in this case the award void, because it is not finall: for it concludes not the controversie, it leaves it to the judgment of law: fo. 16. b.

*Warley and Beckwiths case*, in debt and a bond to stand to an arbitrement

Coke li. 5  
fo 78. a.  
Samons  
case.

8 E. 4. 11.  
a.

Hob. Rep.  
P. 306. Pl.  
28 II

ment: the arbitrators award that the defendant shall pay severall summes to the plaintiffe which were already by the plaintiffe to be done unto him. And further, that if the defendant pay not or before the Feast of S. Andrew the Apostle, then next following, then before the said Arbitrators disprove the debt, or any part thereof, then so much should be deducted out of the payment of the severall summes foresaid, &c.

'Tis true, I finde no judgement in this case, yet I conceive the Law to be somewhat strong in it, that the arbitrement is void, because it leaves the matter in suspence, and undecided, whereas it ought to be finally conclusive. And besides, this is upon the matter a reserving of power to make a second arbitrement, which I conceive they cannot doe.

41 & 42  
of the Qu.  
in the Co-  
mon pleas.

I shall conclude this point with that ingenious conceit of *Hermes Emery* and *Emeryes* case, remembered before, onely a word or two more is added.

An arbitrement saith he, is like a fine, wherein the Judges are arbiters.

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trators: one hath land, & *pro hac concordia*, the other hath money, therefore fines upon condition are refused, because not finall.

So the Law doth reject all arbitrements that are conditionall, or which leave the matter in controversie, in suspense, or unconcluded. For as a fine is so called, because that it doth *finem litibus imponere*: so the proper work or office of an arbitrement, is to put an end to controversie.

So *Yelverton* in 8 E. 4. An Arbitre- 8 E. 4. 12. b  
ment, saith he, is used for the Common-weale, for to decide debates and wrongs amongst the people, as fines are; here hee likewise joynes them both together.

And the very words of the condition in every bond to stand to an award, will sufficiently instruct the arbitrators what they are to do in this behalfe (which certainly prudent Antiquity put in to that very purpose) where the parties doe submit themselves to the arbitrement, sentence, and finall determination of the arbitrators: and therefore the award is not according to the submission, if

it be not finall : the next thing to be considered, is,

*Where an award against law shall be void.*

It may be aptly demanded, what intend by an award against law : for every award that is not according to law ; as where it is uncertaine, impossible, or the like (as I have shew before) may be truly said to be against law : and therefore this will be but *actum agere*, to shew, that an award against Law shall be void.

8 E. 4. 12b By *Billing* in 8 E. 4. an award which is impossible is against the Law : for (saies he) the law is upon possibility and reason, therefore that which is impossible is against Law.

19 E. 4. a. So by *Nole* and *Choke*, an award which is made in parcels, or which enjoynes a thing not in power of the party, is against law.

9 H. 7. 16 By *Keble* also in 9. H. 7. an award that a man shall pay more then his right he ought to pay, is against law.

Tis true, that all these, or the like, in a generall acceptation of the words

may be said to be against law, because they do not agree with Law.

But in a more particular and restrained acceptation of the words, that is properly said to be against Law: which is either *malum in se*, or *malum prohibitum*; that is, either against the Commandements of God, or the Decrees, Maxims, and Principles of the Law, as appeares by the bookes in the margin. And in this sense properly I conceive the Law is to be understood, where it speaks of an award against the law.

And therefore if an award be, that the defendant shall kill or rob I. S. or that he shall maintaine the Plaintiff in such a suit: or that he shall be bound to the Plaintiffe, being a Sheriff, to save him harmelesse if he shall imbeill a Writ, or suffer an escape; or that he shall forge such a Deed or writing for the Plaintiffe, or the like: in such cases, I conceive, the award will be void, because it enjoyns things against the Law. But of this sufficient. The next and last thing to be considered is.

Coke, Littleton, fo. 26. b. 42 E. 3. 6. 2 H. 4. 2. 19 H. 6. 55

Where an award made at severall times  
or by parcels shall be void?

19 E. 4. 1. a  
by Choke

An award, that the Defendant shall pay a certain summe of money to the Plaintiffe, and that the surety for payment thereof should be by the advice of the arbitrators: this by Choke is a void award, because that the arbitrators cannot make their award twice; for every arbitrement ought to be made entirely, and not by parcels. And here is first an award for payment of the money: and then here is another part of the award for the sufficiency of the security, and the same at severall times, which cannot be.

39 H. 6. 9

By *Darby*, Justice, if the arbitrators arbitrate part one day, and part another day, and give their judgment; there the second is void; but they may commune upon one point one day, and another, another day: so that they do not give their judgment *in toto* at a vice for all.

17 H. 7.  
Kilvay

And by *Taxley*, an arbitrement void in part, is void in the whole.

for an arbitrement cannot be made by parcels.

I conceive Reader, that this point will stand upon this difference, where there are severall awards made, and where but one award made at severall times, or by parcels. I conceive they cannot make severall awards: First, because that were not agreeable to the submission; in which the parties bind themselves to stand to the award and arbitrement of the arbitrators; and by these words in the submission, they have no power to make severall awards or arbitrements: and when they have made one arbitrement, they have executed their power and authority, and therefore a second arbitrement will be void. And again, by the same reason, that they might make two awards, they might make twenty, which were very inconvenient.

But now on the other side, I conceive that an award made, be made at severall times, or by parcels, so that it be not delivered under their hands according to the submission untill the whole be made.

And



And certainly that which is principally required in every arbitrement is, that it be agreeable in substance and circumstance to the submission, which it may well be, though it be made at severall times, or by parcels, so that it be made and delivered according to the submission, at the time appointed.

And I conceive all that is done by the arbitrators, is but as a consulting or discourse concerning the matter in controversie submitted unto them, for that they may vary in their judgments as they shall see occasion, for they have liberty to arbitrate according to their discretions, so they have an eye to the submission. I say, I conceive all as nothing untill they have finished and delivered the arbitrement, which is the complement and perfection of it.

Besides, where the submission is of many things, and those of great difficulty, if the Law should be that the arbitrators might not make their arbitrement by parcels, it might be very mischievous to the parties, especially considering that submissi-

are most commonly to illiterate men.

Neither is my opinion groundless, or without authority; for by *Moule* 39 H. 6. an arbitrement may well be made in parcels, so that all be made before any day assigned.

I have now finished this poore endeavour of mine of shewing you what arbitrements are good in Law, and what not. I shall onely adde this Rule, concerning the understanding or exposition of arbitrements, which will bee very usefull in that particular, and so conclude all; and that is,

That an Award or an Arbitrement shall be construed according to the intent or meaning of the Arbitrators, and not according to the words onely, as you shall finde by the Books quoted in the Margine.

21 B. 4. 39

19 B. 6. 36

371

Coke lib.

10 f. 57. b

FINIS

is the only one to illustrate  
 Neither is my opinion  
 or without authority, as by the  
 139. H. 6. an abridgement well  
 made in order to that all the  
 above any other opinion  
 I have read, this is the best in  
 favour of the law, as the  
 what abridgements are good in law  
 and what not, I shall only say this  
 well be, concerning the evidence  
 proper evidence of abridgements  
 will be, very small in size  
 and to be considered; and  
 that an abridgement is a  
 will be considered according to the  
 proper meaning of the words  
 and subject according to the words  
 as you find by the books  
 noted in the margin.

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A true and exact Table to  
the Actions for Slander, by which  
you may easily finde all things  
contained in it, Composed  
by the Author.

**W** Here Words which touch or  
concerne a man in his life shall  
be actionable? From pag. 11.

to pag. 19.

Where Words in such case, which are e-  
quivalent, or equipollent to Words  
actionable, shall heare an action.

17. 18

Where Words in such case, which are  
by way of interrogation, or by way  
of heare-say, or relation, or lastly  
by way of negation onely shall be a-  
ctionable.

19. 20. 21

Where Words in such case, that imply  
an affirmative shall be actionable.

pag. 22

Where in such case are too general, or  
not positively affirmative, will not be  
actionable.

23. to 26

Where

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Where in such case, former words actionable, qualified with subsequent words not actionable, will not bear an action. 40. 41.

Where words in such case that do not import an act, but an intent only, or an inclination to it, shall not be actionable? 42. 43.

Where words apparently impossible, will not be actionable. 47. 48.

Where it doth appear by the Record that the speaking of the words could be no damage to the Plaintiff, the words will not be actionable. 48. 49.

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to the Plaintiffe, yet if the ground of  
that damnification doth not suffici-  
ently appeare by the Record, the action  
will not lye.

49. 50

Where a man is charged with a crime,  
or offence by scandalous words, and it  
doth not appeare by the words, that  
he had notice or knowledge of the  
ground or occasion of the crime or  
offence, in such case no action will  
lye for such words.

51. to 53

Where scandalous words which touch or  
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actionable, and where not?

53. 54

Where words which touch or concerne a  
man in member, or in any corporall  
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55. to 62

Where words in such case will not be  
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them, or the incertainty of the words  
themselves, or of the persons of  
whom &c. or upon the other grounds  
before layd downe?

62. to 67

Where scandalous words which touch  
or concerne a man in his Office, or  
Place of Trust, will beare an action,

on,

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*or*

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SECOND PART  
OF

Actions for Slanders :

With a second Part of Arbitrements,  
together with directions and presidents  
to them, very usefull to all men.

To which is added Libels, or a Ca-  
veat to all infamous Libellers, whom  
these distracted times have generated  
and multiplied to a common Pelt, like  
the Frogs and Locusts of Egypt, even  
almost to the mine and destruction  
of their Mother England.

*Principi populi tui non maledices, &c.  
Non facias calumniam proximo.*

To which likewise is added what defamati-  
ons are determinable in the Ecclesiasticall  
Courts, what not.

As also certaine Quæries or doubtfull Cases,  
collected by the same Author, out of our old  
and new Books, and put under their proper Heads or  
Titles, together with the Books cited *pro & con-  
tra*, very usefull and necessary for all  
Students in the Law

And to each particular Treatise severall and  
distinct Tables.

---

By John March of Grays Inne Barrister.

# THE SECOND PART OF

## Actions for Slanders:

With a second Part of Arbitrations  
together with directions and precepts  
concerning very nearly to all men.

To which is added Libels, or a Ca-  
rent to all persons in Libels, whom  
the distressed times have generated  
and multiplied to a common fault, like  
the Frogs and Bolls of Egypt, even  
small to the mind and destruction  
of their Mother England.

Principal points in new and edicts, &c.  
from former columns in previous.

To which likewise is added what determin-  
ers are determinable in the Ecclesiastical  
Cases, what not.

Also certain Queries or doubtful Cases  
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and new Books, and put under their proper Heads, or  
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And to each particular Title several and  
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[illegible]



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**Actions for Slanders.**

**THE SECOND PART.**

**M**Ich. 25. *Eli. in Banci Regis,*  
adjudged, if a man call  
another perjured man,  
or a procurer of perju-  
ry, an Action upon the  
case lyes; but if he saith, that he is  
a false forsworne man, or that he is a  
vermine of the earth, a false Bro-  
ker, an Hypocrite in the Church; for  
such words no Action will lye.

*Mich. 25. Eli. in B. R. resolved,*  
that if a man bring an Action upon  
the case upon divers words, of which  
some are not sufficient to maintaine

**B**

the

*Actions for Slanders.*

the Action, and upon some the Action well lyes, and the Jury assesse damages for all the words, this is a good matter in Arrest of Judgment, for the Jury assesse damages as well for those words for which the Action doth not lye, as for those for which the Action lyes; but if they do not assesse damages for the words which are not Actionable, or upon the Evidence this be showne, that they do not assesse damages for those words, there 'tis otherwise

Trin. 28. *Eli.* in *B. R.* if a man say of another that he is a man-killer, and hath laine in wait to kill, and is judged an Action upon the case lye for these words.

Hill. 32. in *Eli.* in *B. R.* an Action upon the case was brought for these words, Thou art a coustard Knave, for thou hast sold me a phir for a Diamond, and holden that it doth lye because he was a Goldsmith, and this is cause to impeach him in his living; and so one told another, who lives by buying and selling, though that he is not a

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dent, that he is a Bankrupt, a good  
Action upon the case will lye; but  
if a man saith to a Taylor, that he  
is a coufening Knave, because that he  
hath sold to him a Chaine for Gold  
where 'tis halfe Copper, and that he is  
a coufening Knave upon Record and  
hath been imprisoned for coufening,  
an Act on will lye.

Hill. 32. *Eti.* in B. R. Sir Edward  
Hastings brought an Action upon  
the case against one for these words,  
Sir Edward Hastings hath procured  
a perjured Knave to seek my blood;  
and so he moved that the Action would  
not lye for those words; for that  
they are too generall, and doe not  
touch him in speciall; for he may  
doe lawfully, for 'twas lawfull for  
him to seeke his blood if he were an  
offender in Felony, Murder, or Trea-  
son; and he might procure one that  
was perjured to give evidence of the  
truth of such Fact, and peradventure  
he had no knowledge of the perjury;  
if he had said, that he had pro-  
cured one to be perjured, it had been  
otherwise. And a case was cited, ad-

## Actions for Slanders.

judged in the Kings Bench; where  
 Mr. *Saybop* brought an Action upon  
 the case against one, who said; he  
 got his living by swearing and for-  
 swearing; and adjudged that no Ac-  
 tion will lye upon these words. So  
 twas also adjudged; that no Action  
 will lye if one say of another, That  
 he hath made false Records; and ve-  
 rifies them; but twas adjudged; that  
 an Action will well lye against one  
 who saith of another, that he hath  
 procured one to lye in wait to mur-  
 der him; in *10. of Owen & Bourne*  
*Mich. 29. Eli. in B. R.* a man said  
 of another, Thou art a Thiefe; for  
 thou hast cut off the Eare-marke of  
 my Sheep and set on thine owne; no  
 Action will lye for these words. In  
*Hill 29. Eli. in B. R.* in an Action  
 upon the case for words, for that the  
 Defendant said to a Coroner, Thou  
 art a confounding Knave, and hast con-  
 fessed *10. of his Land*; adjudged  
 that the Action would not lye for  
 any of these words being so general;  
 but if he had touched him in any spe-  
 ciall point of his office, then the

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Action would well have laine. And  
like said that 'twas adjudged, that if  
man say to one, Thou hast robbed  
me, and hast taken away my Evi-  
dence, that no Action will lye.

Mich. 40. & 43. *Eliz. in B. Com.*, an  
Action upon the case was brought by  
a Woman against the Portreue of  
Graves Inne in Kent for these words;  
Thou keepest a House of Bawdry,  
and the Jury gave foure pence da-  
mages; but the Justices would not  
have any Judgement entred for the  
Plaintiffe, but bid her goe to the  
Bawdy Court, which understood  
what Bawdry was, for they did not.  
Yet Reader you shall finde here im-  
mediatly after that it hath been of-  
ten adjudged in this case, that the  
Action would lye, where one sayes  
of a Woman, that she keeps a Bawdy  
House; and certainly there is no  
difference where one sayes of a Wo-  
man, that she keeps a House of Baw-  
dry, and where one saies that she  
keeps a Bawdy-house. And the dif-  
ference is as you shall finde, between  
saying of a woman that she is a Bawd,

and saying, that she keeps a Bawdy house.

Read a-  
gainst Saul

Mich. 40. & 41. Eli. in C. B. Tal-  
verton moved in Arrest of Judgement  
for these words; I heard it spoken  
that the Plaintiffe was one of them  
that was at *Purnells* Robbery, and that  
foure of them went to his house next  
morning; for it may be he was of

Sir Edw.  
Hertberies  
Case:

*Purnells* lide, or came by chance, and  
vouched Sir Edward Hertberies cause in  
the Kings Bench; Sir Edward Hert-  
beries sought my blood (see the like  
case before) whereupon Judgement  
was stayed after Verdict, for the  
Court said there, that it might be  
that he sought it by Indictment, or  
due course of Law. And another case  
there for these words; There is not a  
purse cut within forty miles of Lon-  
don, but the Plaintiffe hath his share  
in it; adjudged not Actionable, for  
the Court said, that it might be  
that part of the Money was by  
*Walmesly* Justice. We had a case here  
which was this; one said of another  
That he was a receiver of Thieves  
and adjudged not Actionable, for

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may be that he might doe so and not know it. *Anderson Ch. Just.* wherethe words have a double construction, we may as soone doe wrong as right, and therefore we ought to give no Judgement in such a case unlesse we will doe it ignorantly, which is a great fault in a Judge; therefore let Judgement be stayed untill the Plaintiffe shew cause *Williams* prayed Judgement for the Plaintiffe the case of *Megge* against *Griffith* for these words; A woman told me she poysoned her first husband, ad Judged Actionable. *Cardinalls* case of *Graies Inne*; If I had consented to *Cardinal*, I. S. had been dispatched out of the way; this was much stood upon, and yet Judgement was given for the Plaintiffe. Another case was this, one brought an Action for these words, He sought my innocent blood (which I beleeve was *Herberts* case before cited) 26. of the *Queene* ad Judged that the words were Actionable, and after Judgement was given in the principall case for the Plaintiffe, and 'tis said by the Reporter,

*Megge against Griffith.*

*Cardinalls Case.*



that the damages being a hundred pound, were mitigated by the Judge to fifteene pound which he accepted, and well he might. For my part Reader, though I had this case from a good hand, yet for the reason given by the other side I am doubtfull of it, and so upon the same ground of *Herberts case* before cited, and that not without ground, for *Hastings case* before cited (if I mistake not) is the same in effect with this, and adjudged point blanke contrary; and so to *Hext and Teomans case*, *Basck. 260* of the Queene in the Kings Bench, *Coke, Lib. 4.* for my ground in *H. Hext* seeks my life, adjudged not Actionable upon the reason given before.

*Hill. 41. Eliz. in O. B.* an Action was brought by a Merchant for these words, Thou art a coufening Knave, and a Banckrupt Knave, *Ac. eadem verba, aut alia in similia sepius repetuit. D. n. riel* moved in Arrest of Judgement, but by the Court the first words were Actionable, and such damages as are given are alwaies supposed to be given for the materiall words, and

*Hext and  
Teomans  
Case.*

and the repetition is voyd. But for my part (Reader) I am somewhat doubtfull, whether the words thus layed be Actionable or not; for without doubt upon the last words, (*an alia iis similis*) other words then the words layed in the Declaration cannot (upon a not guilty pleaded) be given in evidence, and the latter words makes the former words to be uncertaine; for if a man shall bring an Action for words which are Actionable, as for saying that he called him Thiefe, or, *verba iis similis*, certainly no Action will lye for the incertainty; but to this twill be said, that it is true in the latter case, but in the case at Barre the former words are positively alleadged before in the Declaration, and the latter words are only words of repetition,

Trin. 41. *Eli.* in C. B. an Action upon the case was brought by *Huntson* against the Bishop of *Ely*, for publishing that he was his Villaine; the Bishop justified the speaking of the words, afterwards the Bishopricke came to the Kings hands for contempt,

*Huntson* against the Bishop of *Ely*.

tempt, and I finde no further proceeding in the case. Heretofore it is cleare that no Action would have layne in such a case; and the reason is evident, because that he pretends title to him as his villaine. And agreeing with this are the Books cited before, but a *fortiori*, I conceive at this day no Action will lye, because Villinage at this day is obsolete and out of use, and therefore can be neither prejudice nor scandall to a man,

*Sberring-  
ton against  
Ware.*

Mich. 41. & 42. *Eli. C. B.* It was holden by the opinion of the whole Court (*Anderson* absent) and so adjudged, that an Action upon the case will not lye against an Indicter of Felony, albeit the Felon be found not guilty; for *Glanvill* then said, that it would breed a great mischief in the Common-Wealth, if it should be suffered, and many an honest man should be punished, when a Thiefe should escape hanging by the favour of the Jurors. Upon this difference this Iudgement (as you shall find afterwards) is Law, where the pro-

cution

action was out of malice, where not; for though the prosecution be lawful, yet if it be out of malice, and not so much as *probabilis causa* for it, if the party be acquitted, an Action upon the case in nature of a conspiracy will lye; for as a Thiefe may be spared by the favour of the Jurors, so an honest man may be very much prejudiced in his reputation by such malicious prosecution; and this is the common experience at this day.

Mich. 41. & 42. *El. C. B. Williams* moved in Arrest of Judgement for these words; Thou art a forsworne Knave, thou wert forsworne at Ilcon Court (*innuendo*) the Court Leet there holden; and he moved that the Maintiffe by his (*innuendo*) should be no expounder of the Defendants meaning, neither that it should stretch the words further then they were spoken, which the Court agreed; and then he said the words will beare no Action, *Walmesly Just.* Thou art a perjured man will beare an Action, *contra* of forsworne, unless he

he name *Westminster Hall*, or some such place where it shall be intended by the hearers, that he was forsworn in some Court. *Williams* there was this case in the *Kings Bench*, Thou art a forsworne man, thou wert forsworne in *White-Church Court*, and the *Kings Bench* adjudged them not Actionable. The Court, we doubt of this case, and all the Serjeants said, that truly 'twas so adjudged. *Anderson* If one call my Copy-holder a forsworne man, for he denyeth my rent or service, I thinke this shall beare Action, but the *innuendo* is naught, for 'tis not traversable. *Walmesly* Just. One of you forged a *Subpoena* out of the *Chancery* (*innuendo*) the Plaintiffe, Judgement was stayed for this, because he which is grieved ought to be certainly defamed. *Williams*, Thou art, &c. thou wert forsworne in the *Kings Bench*, no Judgement was given, because it may be intended to the Court or Prison; but after Judgement was given in the principall case for the Plaintiffe, agreeing with those cases which I have cited; and

And in this case, that 33<sup>d</sup> *Edw.* one  
*Conner of Southwark* had Judgement  
 for these words; Thou art a for-  
 mer Knave; upon divers motions  
 against him which without question  
 cannot be Law, for 'tis point blank  
 against the Judgement in *Stanhurst*  
 case, in thy Lord *Coke* often cited by  
 me, and according to thy Lord *Coke*  
 it hath been often adjudged.

*Pale. 4<sup>th</sup> Edw.* in *C. B. Williams* mo-  
 ved in Arrest of Judgement for these  
 words; *As B.* told me, that *Ditch* the  
 Hostler and he stole such a mans  
 Horses, for which he brought an  
 Action, but did not alledge in his De-  
 claration, *Uti nra*, *As B.* did not say  
 so, and he ought to averre that, or  
 else the Action will not lye, for here  
 is such a case in *10<sup>th</sup> E. 2.* in a *scandalum*  
*magnatum*; by the Lord *Bramly*  
 so argued, I finde no Judgement  
 in the case, but certainly the Law is  
 with *Williams*, for without doubt if  
*B.* had told the Defendant so, the  
 Action would not lye. Such aver-  
 ment you shall finde taken in the La-  
*morris* case cited by me, the

*Moule a-*  
*gainst Ske-*  
*bington,*

reason

reason of the necessity of such averment is evident, because without it he tacitly admits that *A. B.* did tell the Plaintiffe as is set forth, and against his owne admission no Action.

Coke, lib. 4

Trin. 41. Eli. Oxford and his Wife brought an Action in London for calling the Wife of the Plaintiffe Whore, the Defendant removed this out of London by a Habeas Corpus, a *Procedendo* was prayed, because the Action was maintainable in London by the custome there for the said words though not at the Common Law; by the Court he shall not have a *Procedendo* for such custome to maintain Actions for brawling words is against the law, under favour, and with allowance respect to this Judgement, the reason to me seemes very strange, for why should this custome should be more against Law then their custome of forcible Attachment, their custome to Arrest the Debtor upon Bond before the day of payment, to put in better security, and many other such like customes which are daily allowed to be lawfull I know no reason. And God,

not.

Ther. T



Trin. 17. Car. in B. R. a man was  
 sed in London according to the cu-  
 some there for calling of a woman  
 Whore, upon which a *Habeas Corpus*  
 was brought in this Court. and not-  
 withstanding *Oxford's* case, a *Procedendo*  
 being prayed was granted; and twas  
 said by Serjeant *Pheasant*, who was for  
 the *Procedendo* (and so agreed by *Mallet*  
*Just* and *Bramstone Ch Just*) that of  
 late time there had bin many *Proceden*  
 granted in this case in this Court.

### Libels.

O Eader, I have here added to *Acti-*  
*ons for Slander*, certain cases which  
 have been adjudged touching Libells  
 and Libellours, a learning to the  
 same purpose, and as worthy the  
 knowing as the former, especially in  
 these times of division and distracti-  
 on, in which so many base and scur-  
 rous Libells are vented, even against  
 Power and Authority, a thing de-  
 clineable to all good and peaceable  
 men, and utterly against the Word  
 of God, as I shall make appeare here-  
 in. That I may therefore deterre  
 men

men from this unconscionable and dishonourable way of Libelling, a thing so dangerous to the peace of this Kingdome (as by too too late experience we have found it) and so destructive to all settled government; I shall produce you certaine cases that have been adjudged by the learned Judges and Sages of the Law upon Libells, by which you may see the hainousnesse of the crime, your owne danger, and know the better how to avoyd it. To which I shall likewise adde what defamations are determinable in the Ecclesiasticall Court, and what not. I. 106. 1. Patch. 3. *John*, in the case of *P.* in the Star Chamber in the same Terme, against whom the Kings Attourny proceeded upon his owne confession *Ore tenus*, for composing and publishing of an infamous Libell in Meeter; by which *John* Arch Bishop of *Canterbury* (who was a Prelate of singular piety, gravity, and once, then dead) by descriptions, and circumlocutions, and not in expresse termes; and *Richard* Bishop of *Canterbury* that then was, were traduced

Coke, lib. 5  
fol. 225

and scandalized; in which case these points were resolved.

First, that every Libell (which is called, *Famosus Libellus seu infamatoria Scriptura*) is made, either against a private man, or against a Magistrate, or publique person; if it be made against a private person it deserves a severe punishment, for though that the Libell be made against one only, yet this incites all those of the same family, kindred, or society, to revenge, and so tends by consequence to quarrels, and breach of the Peace, and may be the cause of the effusion of blood, and of great inconvenience. If it be against a Magistrate, or other publique person, this is a greater offence, for this concerns not only the breach of the Peace, but the scandall of Government; for what greater scandall of Government can there be then to have corrupt or wicked Magistrates to be appointed, and constituted by the King to govern his Subjects under him? and a greater imputation to the State cannot be then to permit such corrupt

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men

men to sit in the sacred Seat of Justice, or to have any meddling in or concerning the administration of Justice.

Secondly, it was resolved, that though that the private man or Magistrate be dead at the time of the making of the Libell, yet this is punishable; for in the one case this incites others of the same family, blood, or society to revenge, and to breake the Peace; and in the other the Libeller traduces and slanders the State and Government, which doth not dye.

Thirdly, it was resolved that a Libeller (who is called, *Famosus defensor*) shall be punished either by Indictment at Common Law, or by Bill if he denyes it; or *Ore tenus* upon his owne confession in the Starre Chamber, and according to the quality of his offence he may be punished by Fine, or Imprisonment, and if the case be exorbitant, by Pillory and losse of his eares.

Here by the way I would have every one take notice, that though the

Starre

same Chamber be taken away, yet  
 that this vilde and detestable offence  
 is not left unpunishable; And I  
 would likewise have all men observe  
 especially in these times, in which  
 Libells and Libellers so much a-  
 bound, to the great dishonour of our  
 Nation, and to the disturbance of  
 our peace and government, what a  
 great and defamatory punishment  
 is severable to the offence the Law  
 inflicts upon such offenders; but I  
 will returne againe to the case.  
 Fourthly and lastly, it was resolv-  
 ed, that it matters not if the Libell  
 be true, or if the party against whom  
 it is made be of good fame, or of an  
 ill fame; for in a settled state of Go-  
 vernment the party grieved ought to  
 complaine for every injury done un-  
 to him in ordinary course of Law,  
 and not by any means to reveng him-  
 self, either by the odious course of  
 libelling, or otherwise.  
 And to aggravate the offence, it is  
 as followeth in this case; That  
 that killeth any man with the  
 sword in combat is a great offender,

but a greater offender is he that poysoneth another; for in the one case he that is openly assaulted may defend himselfe, and knowes his Adversary, and may endeavour to prevent it; but poysoning may be done so secretly that no man can defend himselfe against it, for which cause the offence is the more dangerous for that the offender cannot easily be knowne. And of such nature is Libelling, it is secret, and despoyleth a man of his fame (which ought to be more precious to him then his life, and *difficillimum est invenire Authorem infamatorie Scripturæ*) and therefore when the offender is knowne he ought to be severely punished.

Further, in this case you have set forth the difference of Libells, and how many severall waies they may be punished.

Every infamous Libell, *aut est scriptis, aut sine scriptis*. A scandalous Libell *in scriptis* is, when an Epigramme, Rime, or other writing is composed or published to the note or contumely of another, by which his fame

dignit

dignity may be prejudiced; and such Libell may be published, 1. *Verbis aut cantilenis*, as where this is maliciously repeated, or sung in the presence of others. 2. *Traditione*, when the Libell, or any Copy of it is delivered over to scandalize the party. *Famosus Libellus sine scriptis* may be; First, *Picturis*, as to paint the party in any shamefull and ignominious manner. 2. *Signis*, as to fixe Gallowes, or other reproachfull and ignominious signes at the House of the party, or otherwise.

And it was resolved, Mich. 43. & 44. of the Queene in the Searre Chamber in *Halliwoods* case; That if any one finde a Libell (and would preserve himselfe out of danger) if it be composed against a private man, the finder either may burne it, or presently deliver it to a Magistrate; but if it concerne a Magistrate, or other publique person, the finder ought presently to deliver it to a Magistrate, to the intent that by examination and industry the Author may be found and punished.



Now I shall make it evident to you, that Libelling and Calumniation is an offence against the Law of God for *Leviticus 17. Non facias calumniam proximo, Exodus 22. Verse 28. Primum populi tui non maledices, Ecclesiastes 10. Verse 20. In cogitatione tua ne detrahas Regi, nec in secretis cubiculi tui diuiti maledices, &c. Plal. 38. 13. Adversus me loquebantur qui sedebant in porta, & in psallebant qui bibeant vinum. Job 30. Verse 7, & 8. Filii stultorum & ignobilium, & in terra penitus non parent nunc in eorum canticum versus sum & factus sum eis in proverbium. And it was observed that Job, who was the mirror of patience, as it doth appear by his intemperate words, became in a manner impatient, when Libels were made of him; and therefore it doth appear how forcible this is to provoke impatience and contention.*

And now Reader there are certain Notes (as is observed in the close of this case) by which a Libeller may be knowne: *Quia tria sequuntur de maiorum famam: 1. Prædicatoris in*

to you, increase of lewdnesse; 2. Burse  
 of God, evacuation of the Purse,  
 and beggery: 3. And lastly, Consci-  
 ence. Thus I have given you the  
 case at large, full of excellent lear-  
 ning and directions, and well worth  
 the knowing to the people of this  
 age.

### John Lamb's Case.

John Lamb, Proctor of the Ecclesi-  
 asticall Court, exhibited a Bill in  
 the Starre Chamber against one Wil-  
 liam Marche, Robert Harrison, and ma-  
 ny others of the Towne of Nor-  
 thampton, and against Sharnburge and  
 others for the publication of two  
 Libells, and in this case it was resol-  
 ved: That every one that should be  
 convicted in the said case, either  
 ought to be a contriver of the Libell,  
 or a procurer of the contriving of it,  
 or a malicious publisher of it, know-  
 ing it to be a Libell; for if one reads  
 a Libell, this is not any publication

Mich. 8.  
 Ja. in Cam.  
 Stellar.

of it; or if he heare it read, this is not any publication of it, for before that he reads, or heares it, he cannot know it to be a Libell; or if he doth heare it, or read it, and laughes at it, this is no publication; but if after that he hath read or heard it he repeates it, or any part of it in the hearing of others; or after that he knowes it to be a Libell he reads this to others, this is an unlawfull publication of it; or if he doth write a Copy of it, and doth not publish it to others, this is no publication of the Libell, for every one that shall be convicted ought to be a contriver, procurer, or publisher of it, knowing it to be a Libell. But it is a great evidence that he publishes it, when he knowing it to be a Libell, writes a Copy of it, except that afterwards he can prove, that he delivered it to a Magistrate to examine it, for then the act subsequent explaines his intention precedent.

See Reader, *Bracton, Lib. 3. tract. 1. de corona, cap. 36. fol. 155. Fiat non placet in injuria, cum quis pugno percussus fuerit*

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*verberatus, vulneratus, seu fustibus cesus ;  
verum etiam cum ei convitium dictum fue-  
rit, vel de eo factum carmen famosum.*

Here Reader, as in the case before,  
you are taught what shall be a pub-  
lishing of a Libell, and what not;  
and hence you are instructed how to  
demeane your selfe in case a Libell  
should come to your hands, of which  
you were neither the contriver, nor  
the procurer, of which you ought to  
take speciall heed, for that not only  
contrivers and procurers of Libells,  
but also publishers of the same, they  
knowing of them to be Libells are  
punishable as aforesaid.

*Barrow against Lexellin.*

**P**aul Barrow presented a Bill in the  
Starre Chamber against Maurice  
Lexellin, for writing unto him a  
spightfull and reproachfull Letter,  
which being brought, it appeared to  
the Court that it was sealed and de-  
livered to his owne hands, and never  
otherwise published; and it was re-  
solved,

*Hob. Rep.*  
pa. 86.  
pl. 63.

solved, though the Plaintiffe in this case could not have an Action upon the case because it was not published, and therefore that it could not be to his defamation, without his owne fault of divulging of it; and all Actions of that kinde doe suppose, that in *audita quam plurimorum propalavit*, &c. yet that the Starre Chamber for the King did take knowledge of such cases, and punish them; the reason is, for that such quarrellous Letters tend to the breach of the Peace, and to stirring up of challenges and quarrels, and therefore the means of such evill, as well as the end are to be prevented.

I conceive Reader, that a man in the case aforesaid cannot be Indicted at the Common Law, because there is no publishing of it to the defamation and scandall of the party, and that which may be the occasion of quarrels is not a sufficient ground for an Indictment, without an actuall breach of the Peace, no more then a man could be Indicted for sending a challenge to another,

Sir Baptist  
Hicks case;  
Pasch. 16.  
Ja. in Cam.  
Stellat.  
rule according.

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which yet was frequently punished in the Starre Chamber at the Suit of the King.

Reader, it is worthy of thy serious consideration that it is in the first case resolved, that it matters not whether the Libell be true, or whether the party against whom it is made be of good fame, or of ill fame; and the reason is, because that a Libell cannot be justified. And accordingly was the opinion of my Lord Hobbart, in *Lake and Hattons* case, where he saith expressly, that a Libell, though the contents be true, is not to be justified, but to discover it legally to some Magistrate or other that may have Cognisance of the cause is the right way, but saith he, it may be justified in an Action upon the case, and thus much for Libels.

*Hobb. Rep.*  
p. 353.  
Sect. 334

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*Defamations determinable in the Ecclesiasticall Court.*

**T**HIS being a learning dependent upon the former, and indeed the same,

same, only varying in the Jurisdiction, I thought good to give you a touch of it, in which I shall cite you only a case or two which have been adjudged, which will be as a rule to all other cases of this nature.

Coke, lib. 4  
fol. 20. A. B.

Defamations

Trin. 25. of the Queene in the Kings Bench between Palmer and Thorpe, it was resolved, that defamations determinable in the Ecclesiasticall Court, ought to have these three incidents. 1. That it concerne matter meerly spirituall, and determinable in the Ecclesiasticall Court, as for calling a man Heretick, Schismatick, Adulterer. Fornicator, &c. 2. It ought to concerne a matter meerly spirituall only, for if such defamation touch or concerne any thing determinable at Common Law, the Ecclesiasticall Judge shall not have Cōsance of it. 3. Though that such defamation be meerly spirituall, and only spirituall, yet he which is defamed cannot sue there for amends or damages, but the Suit ought to be only for punishment of the fault, *pro salute animæ*.

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And, as to the first and second, <sup>22 E. 4.</sup> <sup>fol. 20.</sup> around, the case in 22. E. 4. was cited to this effect; the Abbot of St. Al-  
 sent his servant to a Feme Co-  
 vert to come to his Master, and to  
 speake with him; the servant per-  
 formed his command, and upon this  
 the woman came along with him to  
 the Abbot, and when the Abbot  
 and the woman were together, the  
 servant (who knew the will of his  
 Master) withdrew himselfe from  
 them, and permitted them two to  
 be alone in the Chamber, and then  
 the Abbot said to the woman, That  
 her array was grosse array; to which  
 the woman said, That her array was  
 according to her quality, and accor-  
 ding to the ability of her Husband:  
 and the Abbot (knowing in what  
 women repose their delight) said to  
 to her; That if she would be ruled  
 by him, that she should have as good  
 array as any woman in the Parish,  
 and sollicitated her chastity; when  
 the woman would not consent to  
 him, the Abbot assaulted her, and  
 would have made her nought against  
 her

her will, the which the woman would not suffer; upon which the Abbot detained her in his Chamber against her will, and to the intent &c. the Husband having notice of this abuse to his Wife spake of all this matter, and said; That he would have his Action of false imprisonment against the Abbot for that he had imprisoned his Wife: upon which the Abbot (adding one fault to another) sued the innocent and poore man for defamation in Court Christian, for that the Husband had published, that the Abbot had solicited the chastity of his Wife, and would have made her nought.

But upon all this matter disclosed to the Court the Husband had a *Prohibition*, because that the Husband might have had an Action at the Common Law, for the assault and imprisonment of his Wife, though that then he had not any Action, nor peradventure ever would; yet because that the scandall determinable in the Ecclesiasticall Court was upon all the matter disclosed, and mixt

with

See 18. E. 4  
6. 12. H. 7  
22. Regis.  
ver. 46. 47.  
6. 54.

with matter determinable at Common Law, for this cause upon motion made by the counsell of the Abbot to have a consultation in this case it was denied by the Court.

As to the third ground before laid downe, see the Statute *De Articulis*, cler. cap. 1, 2, 3. and the Statute *De circumspectie agatis*, Anno 13. E. 1. and F. 51. I. K. 52. D. M. 53. A. F. it appears there, that if a Parson sue a Court Christian for laying violent hands upon him, and to have the party Excommunicated, or a corporall punishment, and not for damages it amends that in such case the Ecclesiasticall Court hath jurisdiction, but the Plaintiffe may recover Costs there; and if the Defendant in case of defamation be put to a corporall punishment, either for laying violent hands upon Clerkes, or the like; if the party will redeeme his Pennance, and agree to pay to the party damnified a certaine summe of money, where the party damnified shall have a Suit for it in the Court Christian no Prohibition lyes.

Accor-

22 E. 4. tit.  
Consulta-  
tion.

5. Corbets  
case.

Coke, lib. 7

fo. 44. A.

Kemes case

According to the resolution afore-  
said, it is resolved in 22. E. 4. Corbets  
case, that when the Spirituall Court  
shall have jurisdiction, it behooves  
that all the cause be Spirituall; as  
a Parson Libell against a Lay-man for  
Tithes imported, the Temporal  
Court shall have jurisdiction, for this  
is mixt with the temporality, and  
thus much in short for defamations  
in the Ecclesiasticall Court.

Pasch. 3. Eli. in C. B. Rot. 527. Cocks  
against Mattelfelde.

London: ff.

**W**ill. Mattelfeld nuper de Merye  
Com. Staff. generosus alias dicitur  
Will. Mattelfeld de Merye in Com. Staff.  
Gent. Sum fuit ad respondend. Thom.  
Cocks, alias dicti. Thom. Cocks et Job.  
Cocks, de placito quod reddat eis quadraginta  
libras, quas eis debet & iniuste detinet  
unde idem Thom. & Job. per Robertum  
bell Attorn. suum dic. quod cum per  
Will. vicesimo tercio die Aprilis, Anno  
ni Domini Regni nunc prima, apud Londoniam  
in Parochia beate Marie, de Arcub.

Ward

Wada de Cheape, per quoddam scriptum  
 suum obligatorium concessisset se teneri eidem  
 Thom. & Job. in predict. quadraginta li-  
 bris solvend. eisdem Thom. & Job. cum in-  
 de requisit. fuisset, predict. tamen Will.  
 de sepius requisit. predict. quadraginta li-  
 bris eisdem Thom. & Job. nondum reddi-  
 dit, sed ill. eis reddere contradixit, & ad-  
 us contradicere, unde dic. quod deterio-  
 ra, sunt & dampn. habent ad valens de-  
 cem librarum, & inde produc. sectam. &c.  
 Et proferunt hic in Cur. scriptum pre-  
 dict. quod debet. predict. in forma pre-  
 dict. testat. cujus dat. est die & Ann. sit-  
 radii, &c.

Et predict. Will. per Edwardum Col-  
 lant Attorn. suum ven. Et defend. vim &  
 injuriam quando, &c. Et per. auditum  
 script. predict. & ei legitur in hac verba.  
 The condition of this Obligation is  
 such, that if the above bound William  
 Mattelsfeld, and Thomas Wright, toge-  
 ther with one Mattelsfeld father of the  
 said William, and one Thomas Brind-  
 ley, and every of them, their Heires,  
 Executors, Administrators, and As-  
 signes, and every of them of their  
 heirs and parties doe well and truly

D

ob.

observe, performe, fulfill, and keep  
 the award, arbitrament, order, rule,  
 and judgement of *Andrew Bayne*, Gent.  
 and *Robert Esthell* Arbitrators, indiffer-  
 ently elected and chosen by the said  
*William Adairfeld*, and *Thomas Wright*  
 on the one party, and *Thomas Cox*, and  
*John Cox* of the other party, to arbi-  
 trate, doome, judge, and award be-  
 tween the said parties, and upon all  
 manner of matters, suits, quarrels,  
 debts, and demands, had, moved, or  
 depending betwixt the said parties,  
 or betwixt any of them, or any of  
 their servants or children, either in  
 their owne right, or to the use or  
 behalfe of any other person or per-  
 sons from the beginning of the  
 world unto the day of the making  
 hereof, and especially for the deter-  
 mination of the right, interest, title,  
 and title, of and in the moyety of cer-  
 taine lands, Messuages, and Ten-  
 ements, lying and being within the  
 Lordship of *Mery* in the County of  
*Staff* now in the tenure and occu-  
 pation of the abovesaid *Thomas Cox*,  
 as also for and concerning the par-

son of all such Lands, Messuages, Te-  
 nements, and Hereditaments which  
 descended and came by right of in-  
 heritance to one Joane Darie, wife of  
 Jo. Darie, and Margeret Cox, wife of  
 the said Thomas Cox, daughters and  
 Co-heires of Margeret Cox, and Sisters  
 and Co-heires of Jo. Cox deceased;  
 so that the said award be made and  
 given up in writing unto the said  
 parties, or to one of them by the said  
 Arbitrators, before the Feast of St.  
 John Baptist next ensuing this present  
 date, that then this present Obliga-  
 tion be voyd, or else, &c. *Quibus le-*  
*gitur & audit. idem Will. dic. quod predict.*  
*Thomas & Joh. actionem suam predict.*  
*versus eum here. non debent, quia proze-*  
*ssione dic. quod predict. Arbitrator. post*  
*confessionem scripti predict. & ante predict.*  
*Testem Sci. Joh. Baptisti, in conditione*  
*predict. superius specificat. nullum arbitrium,*  
*sed iudicium, in premissis*  
*pro plizo & dic. quod Arbitratores pre-*  
*dict. non deliberaverunt in script. inter ip-*  
*sos Will. Mattelfeld, Thom. VVright, Ra-*  
*ph. Mattelfeld, Thom. Brindley, & pre-*  
*dict. Thom. Cox, & Joh. Cox, aliquod*  
 D 2  
 arbi-



*arbitrium, ordinacionem, sive iudicium*, prefat. Will. Mattelsfeld, Thom. Wright, Radum Mattelsfeld, & Thom. Brindley, sive eorum alieni, de & super premissis, in conditione predicta. specificat, secundum formam & effectum conditionis illius, & parat. est verificare, unde pet. indicium predicta. Thom. & Job. actionem suam predicta. versus eum herem. debeant, &c.

And upon this Plea the said Plaintiffs demurred in Law, to which the Defendant joyned, and this was adjudged no Plea, because the Defendant pleads, *Quod non deliberaverunt in scriptis*; and the condition is given up in writing, and therefore the Plea should be, *Quod non reddiderunt in scriptis*.

Mich. 27. H. 8. a man was bound in an Obligation to another to stand to the arbitrement of certaine persons, and the Arbitrators award that the Obligee shall make a Lease for terme of yeares to the Obligor, rendering a certaine Rent to the Obligee, &c. and the Obligee made the Lease according, and after the Obligor did not pay the Rent reserved

upon

upon this Lease to the Obligee, yet the Obligee, who was the Lessor, cannot bring an Action of Debt upon the same Obligation against the Obligor, because he doth not pay the Rent, and this by the opinion of *Sbilly* and *Ingletyeld* Justices clearly, becaule these words in the said award, viz. rendering a certaine Rent, are not parcell of the substance of the said award, but the making of the said Lease is the effect of the said award; and the Lessor hath another remedy for the said Rent, as to distraine. But if the Arbitrators had awarded that the Obligee should make a Lease to the Obligor, and that for this Lease the Obligor should pay to him a certaine summe of money, that if the Obligor doth not pay the said summe, then the Obligee shall take advantage of this Obligation.

Pasch. 28. H. 8. A. and B. were bound in in an Obligation joyntly and severally in 10. l. to one C. to stand to the arbitrement of certaine persons, of all trespasses, debates, &c.

and the Arbitrators award, that the said A. should pay to the said Oblige, 16. s. and that the said B. should pay to the said Oblige 3. s. 4. d. and in debt brought against the said B. upon this Obligation the said B. pleaded generally, that he had performed the said arbitrement; and *Mountague* and *Inglefeld* Justices said, that this was no good plea; but that the said Defendant ought to have pleaded specially how he had performed the award; and he ought also to have shewne how that the said A. had performed the award, because the said B. is bound for the said A. and every of them for the other.

Mich. 34 H. 8. in an arbitrement where the submission is *de jure tituli & possessione*, of certaine Lands betwixt the parties, the Arbitrators cannot award, that the Obligor shall cause the Lord of the Mannour of whom the said Land is holden, to let to the Oblige the same Land by Copy, or that he shall make a Stranger make a release to the said Oblige of all his right in the same Lands,

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this by Baldwin chiefe Just. of the  
Common Bancke, see the like Anno  
28. H. 6. fol. ultimo.

Now (Reader) the reason of this  
case is evident, because tis an award  
of a thing to be done by a Stranger,  
to inforce the doing of which lyes  
not in the power of the parry, and  
therefore voyd; as you shall finde  
the Law to be in my first tract of Ar-  
bitraments, pag. 214, 215, 216, 217.

Termo Sci. Mich. Anno 3. 8c  
4 Eliz. Reginae, Rot. 1374.

**A**ndreas Meverell nuper de Ap-  
plebee in Com. Leicest. gene-  
rosus sum fuit ad respondend. Ioh  
Browne, de placita quod reddat ei  
20. l. quas ei debet & injuste deti-  
net, &c. Et unde idem Ioh. per Will.  
Perrison Attornatum suum dic. quod  
cum predictus Andreas quinto deci-  
mo die Septembris, Anna Regni Do-  
mine Reginae nunc primo apud Lon-

don, in Paroch. beat. Marie de An-  
 cubus in Warda de Cheap per quoddam  
 script, suum obligatorium concessisse  
 se teneri eidem Ioh. in predict. tri-  
 ginta libris solvend. eidem Ioh. cum  
 inde requisit fuisset predictus tamen  
 Andreas licet sepius requisitus predi-  
 ctas triginta libras eidem Ioh. nondum  
 reddidit sed ill. ei hucusque reddere  
 contradixit, & adhuc contradicere  
 de dic. quod deteriorat. est & damp-  
 num bet. ad valenc. decem. librarum  
 & inde producit sectam. &c. Et pro-  
 fert hic in Curia scriptum predictum  
 quod debitum predictum in forma  
 predicta Testatur Cujus dat. est die  
 & Anno supra dict. &c.

Et predictus Andreas per Leonar-  
 dum Stephenson Attornatum suum  
 venit & defend. vim & injuriam  
 quando, &c. Et petit Auditum scripti  
 pred. & ei legitur, &c. Pet. etiam  
 Auditum conditionis ejusdem scrip-  
 ti & ei legitur in hec verba. The con-  
 dition of this Obligation is such

that

if the above bounden *Andrew*,  
Executors, or Administrators,  
stand to abide, performe, ful-  
fill, and keepe the Award, Arbi-  
trament, Ordinance, and Judge-  
ment of *Michael Purifie* Esq; Arbi-  
trator, indifferently elected, named,  
and appointed and chosen by the  
foresaid parties to Arbitrate and  
Ordaine, Doome and Judge of,  
in, and upon the delapidations  
of the Parsonage of *Stretton* in the  
County of *Derby*, with the appur-  
tenances being, and remaining in  
ruine and decay, by the fault, and  
after the death of *Robert Teoman-*  
*son* Clerke, late Parson there; and  
also in and upon all and singular  
Controversies, Suits, Quarrels, Debts,  
Debates, Trespasses, and Strifes  
past, moved, stirred, or now de-  
pending in variencie betwixt the  
parties from the beginning of  
the world untill the day of the date  
hereof, so that the same Award be  
made,

made, sealed, and delivered in writing unto either of the said parties under the Seale of the aforesaid Arbitrator, at or before the first day of October next comming after the date hercof, that then this Obligation to be voyd, or else to stand, and be in full strength and vertue. *Quibus lect. & audit idem Andreas dic. quod predictus Ioh. Acconem suam predict. versum habere non debet quia protestando quod predictus Arbitrator post confectionem scripti pred. & ante predictum primum diem Octobris in conditione predict. specificat non fecit aliquod Arbitrium ordinatum neque iudicium inter partes predictas de & super premissis in eadem conditione superius specificat. pro placito dic. quod predictus Arbitrator post confectionem scripti predicti & ante predictum primum diem Octobris non fecit & deliberavit in scriptis sub sigillo suo aliquod Arbitrium*



arbitrium ordinationem neque iudici-  
um inter ipsum Andream, & pre-  
dictum Ioh. de & super premissis in  
conditione predicta superius spe-  
cificat; Et hoc paratus est verificare  
unde pet. iudicium si predictus Ioh.  
de conem suam pred. versus eum ba-  
tere debeat, &c.

Et predictus Ioh. dicit quod ipse  
per aliqua preallegat. ab Ac con-  
e predicta bend. precludi non de-  
bet quia dic. quod post confectio-  
nem scripti predicti. & ante pre-  
dictum primum diem Octobris in  
conditione predicta superius spe-  
cificat (viz.) vicesimo tertio die Sep-  
tembris, Anno primo suprascripti. apud  
London, in Paroch. & Warda pre-  
dicti. predictus Arbitrator accep-  
sit super se onus Arbitrarii ordinationis  
& iudicii predicti. de & pro de-  
liquidationibus & aliis de casibus  
predicti. Rectorie Horeorum, & alio-  
rum edificiorum ordinavit & Arbi-  
tratus fuit inter ipsam Ioh. & pred.  
Andream

Andream de & supra premissis  
 conditione predicta superius  
 specificat. modo & forma sequent  
 (viz.) quod predictus Andreas Ma  
 verell ante festum Sci. Ioh. Baptiste  
 tunc proximi sequent. reperaret &  
 & emandaret cum acerbibus clau  
 tegulis & calce ubi necesse requir  
 domum mansionalem predictam. Rectorie  
 & omnium aliarum domorum re  
 gulat. ejusdem Rectorie suffici  
 ent. ad custag. & onera pre  
 dictam. Arbitratoris & cuiusdam  
 Ric. Browne, & etiam quod predi  
 ctus Andreas inven. & imponer  
 unam notam soleam vocat. a Ground  
 fill ex illo latere versus campum vo  
 cat, le Backside domus Mansional  
 immittend. vel imponend. antes vo  
 cat. studdies & faceret parietes  
 coneraticas oblumaret & substru  
 ret voc. groundfilled latus illum per  
 totum ad tunc in decasu existent  
 & etiam cooperire eandem cum re  
 gulis & calice sufficient. ac quod  
 pre

dictus Andreas reparare faceret  
 in. & maeremium in longo hor-  
 reum in omnibus locis inde ubi mae-  
 remium ad tunc fract. vel in decasu  
 etiam causaret horreum illud  
 sufficient. esse tectum vocat. Thacked  
 necesse requireret ratione impu-  
 tionis pred. maeremij & in omni-  
 bus alijs locis quam talibus quales  
 essent fract. pervent. tantum post  
 mortem predicti nuper Rectoris  
 quod predictus Andreas heret  
 amina ad emendend. omnes pre-  
 dictos locos sic fract. Et predictus  
 Andreas emendaret & reperaret om-  
 nes mures predict. Rectorie qui  
 erunt indecasu in vita predict.  
 Rectoris ante tunc in decasu & ruina  
 aut sufficient cogitat. esse per  
 dict. Arbitratorem & pre-  
 dictum Ric. Browne, & pro omni-  
 bus alijs decasibus Ianuar. osi osior.  
 arum palorum & murorum fract.  
 act. post mortem predict. nu-  
 meri Rectoris quod predict. Andreas  
 Meverell,

Meverell, esset inde exonerat  
 predictum Arbitrium & quod  
 dictus Joh. Brown, exoneraret  
 dampn. conservaret predictum  
 dream versus, Will. Mote ad  
 Rect. Rectorie de ulterioribus  
 mand. pro delapidationibus  
 ille que ante & supra fur. appun-  
 & assignat dict. Andree ad  
 ciend. & agend. & insuper  
 dictus Arbitrator declaravit per  
 bitrium suum predictum quod  
 ctum Arbitrium suum non exten-  
 ret alicui alie materie vel deman-  
 quam super fuit mentionat &  
 clarat totam pro & concern-  
 easdem delapidationes vel decas-  
 pro ut per Arbitrium predictum  
 nus apparet quod quicumq; Arbit-  
 am predictus Arbitrator post  
 fectionem scripti predicti &  
 predictam primum diem Octobris,  
 (viz.) predicto vicesimo tertio  
 Septembris, Anno primo supradic-  
 apud London, in Paroch. & ward-  
 pre

at per predictam tam prefat. Andree quam  
 d. per eundem Joh. in scriptis indentat. si-  
 & illo ipsius Arbitratoris reddidit &  
 m. liberavit. Et idem Joh. dicit quod  
 d. ipse performavit Arbitrium  
 us. condonationem & iudicium predict.  
 quod omnibus ex eius parte performand.  
 und. formam & effect. Arbitrii  
 ad solv. protestand. quod predictus An-  
 der. prefat. post confectionem Arbitrii pre-  
 per. & ante Festum Nativitat. Sci.  
 l. predicti Joh. Baptisti tunc prox. sequent.  
 extend. reparavit & emandavit cum as-  
 emand. clavis tegulis & calce pre-  
 & dictum domum mansional. predict.  
 necesse requiret secund.  
 decem. formam & effectum Arbitrii pred-  
 um per hoc parat est verificare unde per.  
 arbitrium & debitum suum predictum  
 & cum dampnis suis ratione deten-  
 & debi illius sibi adjudica-  
 & c.

Et predictus Andreas ut prius dic.  
 predictus Arbitrator post conse-  
 rationem scripti predicti & ante pre-  
 dictum

dictum primum diem Octobris, tam  
prox. sequent non fecit & delibera-  
vit in script. sub sigillo suo aliquando  
Arbitrium ordinationem neque ju-  
dicium int. ipsum Andream & pre-  
fat. Joh. de & super premissis in  
conditione predicta superius speci-  
ficat pro ut ipse superius allegavit &  
de hoc ponit se super patriam &  
predictus Joh. similiter ideo precepit  
est, vic. quod venire fac. hic a di-  
sci. Mich. in unum mensem 12, per  
quos, &c. Et qui non, &c. ad re-  
cognitionem, &c. qui tam, &  
retourn. Octab. Hillarii.

Postea die & loco infra content. com-  
ram Jacobo Dyer Mil Capital. Justici-  
Domine Regine de banco associat, &  
bi Joh. Farewell per formam Statu-  
&c. ven. tam infra nominat. &  
Browne, quam infra scrip. Andream  
Meverell per Attorn. suos infra con-  
tent. Et jure jur. unde scil. infra  
mencio exacti similiter ven. qui  
veritatem de infra content. dictum

electi triat & jurat dic. super sacrum.  
 suum quod infra nominat. Michael  
 Pursey post consecutionem script. infra  
 specificat & ante infra script. pri-  
 mum diem Octob. viz. vicesimo tertio  
 die Septembris, anno Regni Domine,  
 Eliz. Regine nunc primo fecit & in-  
 script. sigillo suo delibavit quoddam  
 am & arbitrium inter prefatum, Ioh.  
 Browne armig. in nomine & pro  
 parte cujusdam Will. Mote, ad tunc  
 2, per Rectoris de Stretton infra nominat,  
 ad una parte & prefat. Andreā  
 , & Meverell gener. executorem infra  
 content. Roberti Tomanson, Clericū  
 ent. super. Rector de Stretton predict.  
 Justiciarius & pro delapidationibus & aliis  
 iat, & casus ejusdem Rectorie Horreorum  
 Statu & aliorum edificiorum ibid. tenor  
 at. Insuper quidem in hec verba. The A-  
 ndrew Ward and Order made at Stretton  
 fra consule Feild. by me Michael Pursey  
 infra Arbitrator, indifferently elect and  
 qui chosen betwixt Iohn Browne Esq;  
 dicent the name and for the behalfe of  
 elid.



one William Mote now Parson of  
 Stretton aforesaid of the one par-  
 ty, and Andrew Meverell Gent. Exe-  
 cutor of one Robert Teomanston  
 Clerke, late Parson of Stretton  
 aforesaid, of and for the delapida-  
 tions and other decay of the same  
 Parsonage, Barnes, and other build-  
 ings there the 23. day of Septem-  
 ber, in the first yeare of our Sove-  
 raigne Lady Queene Elizabeth  
 first I the said Michaell order and a-  
 ward, &c. *Ut supra sed utrum Ar-*  
*bitrium predictum per prefat. Mich.*  
*Purfey inter eosdem Ioh. Browne*  
*in nomine & pro parte predict. Will.*  
*Mote & Andream Meverell, modum*  
*& forma predict. factum & delibera-*  
*sit aut in lege adjudicari debeat ali-*  
*quod Arbitrium ordinationem sive*  
*judicium inter prefat. Ioh. & Andream*  
*de & super premissis factum, &*  
*& in scripto sub sigillo suo delibera-*  
*nec ne eidem jur. petunt. advise-*  
*ment, Cur. &c. Et si supra vide-*  
*male*

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materiam predict. videbitur eidem  
Cur. quod Arbitrium predict. per  
presat. Mich. in forma predicta  
factum & delibat. sit aut in lege  
judicari debeat Arbitrium ordi-  
nationem sive iudicium inter presat.  
Ioh. & Andream de & super pre-  
missis factum & in script. sub sigillo  
suo delibat. tunc iidem jur. dicunt  
super sacrum suum quod predictus  
arbitrator, post confectionem scripti  
infra content. & ante infra con-  
t. primum diem Octobris, fecit  
& delibavit in script. sub sigillo suo  
predictum Arbitrium ordinationem  
& iudicium inter ipsum Andream  
& presat. Ioh. de & super premissis  
conditione infra script. interia-  
specificat pro ut predictus Ioh.  
Browne interius allegavit, & assid.  
& Arripna ipsius Ioh. Browne, &c. ul-  
mus, &c. ad 3. s. 4. d. Et pro misis  
constigiis illis, ad 53. s. 2. d. &c.  
& super totam materiam predi-  
videbitur, eidem Cur. quod Ar-  
bitrium

*bitrium predictum per prefat. Michem  
in forma predicta fact. & delibat.  
non sit nec in lege adjudicari debeat.  
Arbitrium ordinationem neque ju-  
dicium inter prefatum, Ioh. & An-  
drea de & super premissis factum  
& in script. sub sigillo suo delibat.  
tunc iidem jur. dic. super sacrum  
suum quod predictus Arbitrator  
post confectionem scripti predicti  
& ante primum diem Octobris non  
fecit & delibavit in script. sub  
sigillo suo aliquod Arbitrium ordina-  
tionem neque iudicium inter ipsos  
Andream & prefatum Ioh. de &  
super premissis in conditione predi-  
cta interius specificat pro ut predi-  
cus Andreas interius allegavit, &c.*

And the opinon of the Court was  
that this was a voyd Arbitrement  
and the matter was well debated and  
argued by the Serjeants and Justices  
and because that this Arbitrement  
was contrary to the said submission  
Judgement was given, that the Plain-  
tiffe, *nihil capiat per billam.*

Th

This very case I doe confesse I have cited before which is reported by my Lord Dyer, as you shall finde in my first Tract of Arbitrements; that which occasioned me to cite it againe in this place was the pleadings, which I found at large taken and reported (as they are here) by Serjeant Bendlowes in his Reports, which no doubt may and will be usefull to Pleadors. And because the Reporter is so short, and so generall in the reason of the Judgement, I thinke it will not be amisse to light you in the darke, to shew you the things insisted upon, and the reasons in a more particular way, of the Judgement, which were these; The Parties were bound to stand to the award of *A.* for delapidations, &c. and all other Suits, quarrels, &c. *Ita* and the said award were made, &c. who arbitrates thus; the award of *I.* indifferently chosen by *I.* for the chaffe of the Obligor of the one part, and the Obligee of the other part, &c. and after he makes an award concerning the delapidations,

with a protestation that he would not meddle with the rest.

And here two things were insisted upon; First, whether the award in this case were betwixt the parties or no, because 'tis said the award of *A. &c.* chosen by *I.* for the behalfe of the Obligor, &c. and I conceive the better opinion in my Lord *Dyer*, fol. 216, 217. to be, that it was because I was not a party to the award, but only a deputy or factor &c.

The next thing was, whether the award being made of part only, with a protestation that he would not meddle with the residue were good or not; and in this case the opinion of the Booke is (agreeing with what I have said before) that the award is nought, because it did not extend to all the points in the submission, viz, to the Suits and Quarrels, &c. and by his protestation not to meddle with them; he hath disabled himselfe to be an Arbitrator in the premises, because he refused to make an Arbitrement according to the submission of the parties, who chose

him for to arbitrate conditionally,  
*at supra, viz.* So that the same award,  
 &c. which is as well of Suits and  
 Quarrels, &c. as of delapidations &c.  
 so you have here a more full account  
 of the grounds of the aforesaid  
 Judgement, which I hope will not  
 be taken amisse, because *vis repetit*, in  
 regard the reason given by *Bentones*  
 was too generall, and too difficult  
 for weake judgements to discover,  
 though better might; and if the lat-  
 ter might condemne me, yet I am  
 confident the former will not.

Note (Reader) these cases of  
 Actions for words, as also for Ar-  
 bitrements, which I have here ad-  
 ded, being applyed to the grounds  
 laid downe in my first severall Trea-  
 tises, and their reasons examined,  
 will according to the severall cases be  
 either vindicated or refuted.

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*Circumstances to be lookt into in submission;*  
*first, that it be in writing.*

NOW that I have set forth the  
 Law of Arbitrements, as also

the persons and things necessary in every Compromise; tis fit to consider such other circumstances as be requisite in the same.

Three things belides the persons and things ought to be observed in every submission.

First, that it be made by writing, with the parties Covenants, or Bonds to bind their Heires and Executors to performe the award which shall be thereupon made, that the Arbitrators may know their power, and the parties how farre they are subject to their sentence and determination, and also lest their labour and judgement therein should be frustrate for want of meanes to compell the execution of the same; which may fall out in many cases where the submission is by word, as appears by the Law of Arbitrements; hereby likewise will be prevented, confusion and incertainty, the certaine and unavoidable consequents of all transactions and agreements not committed to writing

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*Of the power given to Arbitrators.*

Secondly, 'tis convenient that the very submission arme the Arbitrators with sufficient authority to doe all things necessary for the ending of the controversies, as to appoint times and places for their meeting, to examine and decide the matter committed, and to bring the parties with their proofes, evidences, and witnesses thither together before them, and to punish the persons defective, and to expound and correct such doubtfull sentences and questions as may arise upon their award inconvenient to either parties, contrary to equity and the Arbitrators intention; which inconveniences could not by them be fore-seene at the making of the award, as it often happens.

*Of time and place.*

Thirdly, that by the submission, convenient time and place be appointed

pointed for the giving up of their award to the parties, or their Attornies, Deputies, or Aisignes, lest the parties should otherwise be kept long in suspence, and expectation, with vaine hope of an endlesse end; and that the Arbitrators may before the set time finish their award; for whatsoever they doe arbitrate after that time is voyd, as you finde in the Law of Arbitrements. And now I shall set downe some few presidents, (usefull for most men) of deeds of submission to awards, and covera to performe the same; as also conditions of obligations to that purpose; and certaine formes of Arbitrements thereupon made, a deed of submission may be made as followes.

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*An Indenture of submission to an award, with  
Covenants to performe the same.*

**T**HIS Indenture made, &c. between *A. B.* of the one party, and *C. H.* of the other party witnesseth

that the said *A. B.* and *C. H.* doe by their presents willingly compromit, and submit themselves, and either of them to the award, arbitrement, order, rule, doome, and judgement of *A. B.* and *C. H.* Arbitrators, indifferently named, elected, and chosen by the said parties to arbitrate award, order, decree, and judge of, and upon all and all manner of Actions, Suits, Quarrels, Debts, Accounts, Trespasses, Controversies, Debates, and demands whatsoever had, made, moved, depending, or accrued, or which might have been had, or moved between the said parties at any time or times before the date hereof (except one Action of Debt, &c. depending between the said parties in the Kings Majesties Court of Common Pleas, or before, &c. and except one debt of 10. l. due to the said *A. B.* by the said *C. H.* for the price of certaine corn, &c. and except all Lands and Tenements of the said *A. B.* and such like exceptions,) &c. so alwaies that the same Arbitrators doe make their award,

award, order, and judgement of  
 concerning the Premises, to be made  
 by writing indented under all their  
 hands and Seales on this side, and be-  
 fore the tenth of *June* now next  
 ensuing, and one part of the same  
 deliver, or cause to be delivered by  
 the said Arbitrators to the said *A*  
 or his certaine Attorney, or Attor-  
 nies in that behalfe requiring the  
 same the said tenth day of *June* now  
 next comming, at or in the Parish  
 Church of *R.* in the said County of  
*Torke*; and the other part of the  
 award to the said *C. H.* his Attor-  
 ney, or Attornies, Deputy, or As-  
 signe, requiring the same at the said  
 day and place; and so alwaies that  
 the said Arbitrators doe not by the  
 said award order, or appoint any  
 or acts, thing or things to be done  
 or performed by and to any person  
 or persons, other then to or by the  
 said parties to these presents, their  
 Heires, Executors, Administrators  
 or Assignes, or some of them, and  
 not to, or by any stranger or stran-  
 gers to this present submission. And

the

of and the said *A. B.* and *C. H.* and either of them for themselves, their Heires, Executors, and Administrators, and the Heires, Executors, and Administrators of either of them, doe by these presents mutually covenant, conclude, promise, and agree unto, and with the other his Executors, and Administrators, and every one of them, that neither they, nor either of them will at any time hereafter revoke the Authority hereby given to the said Arbitrators, nor discharge them, nor either of them in the said faculty or power of Administration; and that they, and either of them, and the Heires, Executors, Administrators and Assignes of either of them, on their severall parts shall, and will well and truly observe, performe, fulfill, and keep all and every clause, sentence, article, submission and agreement in these presents mentioned on his or their part to be performed and kept, according to the tenour, true intent, and meaning of the same; In witness whereof we the said parties  
to

to these presents have interchangeably set to our hands and Seales the day and yeare above written.

Here we may take notice that the submission is conditionall, *Ita semper quod, &c.* so alwaies that the award be made concerning the premises, by deed indented under their hands and Seales before the tenth of June, &c. and in this case the award must be of all the things submitted, and agree with the submission in every particular circumstance of it, or else it will be voyd in the whole because it is conditionall, otherwise it would be where 'tis not conditionall, as you may finde in the Law of Arbitraments, pa. 181. 89. 150.

Another conditionall clause in this submission (not usuall) is very observable, which is this: so alwaies that the said Arbitrators doe not order &c. any Act &c. or thing &c. to be done, to or by a Stranger. In this case I doe conceive, by reason that 'tis conditionall, if they shall award contrary it will avoyd the whole award; otherwise it would be

if the submission were not condition-  
all; for in such case it would be  
void only as to the Stranger, and  
good to the parties, as it is in the Law  
of Arbitrements.

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*Of binding the Parties to performe  
the award.*

**T**He parties may submit them-  
selves to award by obligation,  
with condition according to the ef-  
fect of the submission, but that seem-  
eth dangerous, because so they may  
for a trifle hazard the whole penalty  
of the Bond, which were too mis-  
chievous; but to this it may be truly  
said, it will the rather ingage to the  
performance of the award, and  
thereby determine Controversies,  
which is the sole aime, scope, and  
end of Arbitrements; and therefore  
that certainly is the best and most  
approved meanes which is most like-  
ly and probable to effect its end, and  
for such a condition it may be made  
as follows.

*The*



*The condition of an Obligation to  
performe an award.*

**T**He condition of this Obligation is such, that if the above bounden *A. B.* his Heires, Executors, Administrators and Assignes, and every of them doe, and shall on his and their part and behalfe well and truly stand to, obey, performe, fulfill, and keep the award, arbitrement, order, rule, doome, and judgement of *S. T.* and *W. K.* Arbitrators indifferently elected and chosen, as well on the part of the said *A. B.* on the one party, as on the part of the above named *C. D.* on the other party, to arbitrate, award, order, and judge of, and upon all and all manner of Actions, Suits, Quarrels, Debts, Acccompts, Trespasses, Controversies, Debates, and Demands whatsoever had, moved, depending, or acorued, or which might have been had or moved between the said parties at any time or times before the date hereof,

thereof (except one Action of Eie-  
 some firme; depending between the  
 said parties in the Kings Majesties  
 Court, commonly called The Kings  
 Bench, as by the Records thereof in  
 the same Court remaining it doth  
 and may appeare; and except out of  
 this submission all Lands and Tene-  
 ments of the said *A. B.* or any like  
 exception.) so alwaies that the same  
 award, arbitrement, order, and judge-  
 ment of, and concerning the premi-  
 ses be made by writing, indented  
 under all their hands and Seales be-  
 fore such a day next ensuing, and one  
 part of the same delivered, or caused  
 to be delivered by the said Arbitra-  
 tors to the said *A. B.* or his certaine  
 Attorney, or Attornies, Deputy,  
 or Deputies in that behalfe, requiring  
 the same the said day, at, or in the  
 Parish Church of *K.* in the said  
 County of *T.* and the other part of  
 the said award be likewise delivered  
 by the said Arbitrators to the said  
*D.* or his certaine Attorney, or  
 Attorneys, Deputy, or Deputies in  
 that behalfe requiring the same at

F

the

the said day and place. And so that by vertue or occasion of the said award, neither of the said parties, nor the severall Heires, Executors, or Administrators of them, or any of them be to doe any act or thing, to, or by any Stranger to the same award, and to these presents; and so as the said A. B. doe not discharge the said Arbitrators before the said time; that then this present Obligation to be utterly voyd and of none effect, or else to stand, remaine, continue, and be in full strength and vertue.

Upon this Condition I shall only observe this ( which I might likewise have done before upon the submission by deed of Covenant ) that the Arbitrators shall award any thing touching the things excepted, that in such case I doe conceive the whole award is voyd because 'tis conditional, and ought to be the same award, and made concerning the premises not excepted, which in the case 'tis not; otherwise it would be if the Arbitriment were not conditional.

all, for in such case it would be voyd  
only as to the things not within the  
omission; *tamen quere* in the for-  
er case, because tis an award *de*  
*missis*, and more.

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*Of the condition to performe an award  
of Lands.*

**A**Nd if the award be concerning  
a title to Land, the words in the  
condition may be thus:

As well of, for, and concerning the  
right, title, interest, use, possession,  
and demand of and in the Mannour  
S. with the appurtenances in S.  
the said County of T. and all  
lands, Tenements, and other He-  
ritaments, with the appurtenances  
S. aforesaid, in the occupation of  
the said A. B. and his Assignes; as  
and upon all Actions, Trespases,  
Sutes, Quarrels, Debts, Duties, De-  
mors, griefes, inconveniences, and  
demands had, moved, stirred, or de-  
manding between the said parties con-  
cerning the said Mannour, Tene-  
ments,

ments, and premisses, and any part thereof. And also, if the said A. B. before the Feast of P. now next coming, doe shew unto the said Arbitrators all such writings as he hath concerning the said Mannour and Premises, at such time and place as the said Arbitrators shall appoint for the sight thereof. So alwaies that, &c. *ut supra*, That then. &c. *ut supra*.

Upon this condition I shall only observe thus much; that as the former was a submission generall conditionall, so this is a submission speciall conditionall, which difference you shall finde in the Law of Arbitrements, and the differences of Pleading in such case: As also that a man may binde himselfe in an Obligation to stand to an award concerning the title of Land (which of selfe is not arbitrable, nor is such Arbitrement any plea in such case in barre of an Action) and that in such case the Bond shall be forfeited for not performance of the award as you may see in the Law of Arbitrements, pag 152 153.

Arbitrement or award of Lands, by which  
the party covenanteth to performe it.

His Indenture made, &c. be-  
tween T. R. &c. of the one party,  
and L. M. of, &c. of the other party  
witnesseth; That whereas there hath  
been, and yet is contention, vari-  
ance, and Suit betwixt the said par-  
ties, not only for and concerning the  
right, title, and interest of, and in a  
certaine quantiry of ground, by esti-  
mation two Acres or thereabouts,  
lying in K. and adjoyning to the  
Mill of the said T. R. in K. afore-  
said, claimed by either of the said  
parties to be his owne Land and In-  
heritance; but also for and concer-  
ning certaine waies to the Mill of the  
said T. through the ground of the  
said L. from all the Townes, Villa-  
ges, Hamlets, and other places in the  
North side of the River of D. borde-  
ring, lying, and being within the  
space of ten miles of the said Mill,  
and all other matters and controver-  
sies betwixt the said parties, for the

friendly ending and appeasing of which said variences and controversies, the said parties have compromised and submitted, and by these presents doe compromit and submit themselves, and all matters in variences aforesaid, to the order, arbitrament, award, doome, and judgement of F. W. and T. W. Whereupon the said Arbitrators having viewed the said ground in variences, and perused divers writings and evidences concerning the same, and heard the testimony and witnesse of divers ancient men and neighbours dwelling upon the said ground, as well touching the occupation and usage of the said ground by the said T. R. and his ancestors, as also the said wayes useth unto the said Mill by the inhabitants aforesaid time out of minde, doe make and declare their award, order, doome, and judgement touching the premises, and every part of the same, and the said T. R. and L. M. doe covenant severally either of them to and with the other, for themselves, their Heires, Executors, and Administrators

arbitrators



Arbitrators in manner and forme fol-  
 lowing. And first, the said Arbit-  
 rators doe order, award, and judge,  
 and the said L. M. is so contented and  
 agreed, and accordingly doth cove-  
 nant and grant for him and his  
 Heires, to, and with the said T. R.  
 his Heires, &c. that he the said T. R.  
 shall and may from henceforth have,  
 hold occupy, and quietly enjoy to  
 him and his Heires for ever the said  
 parcel or quantity of ground, con-  
 taining by estimation two Acres,  
 lying and being on the North side of  
 the River of D. directly over against  
 the said Mill, and demeane Lands of  
 the said T. R. in K. aforesaid, as it is  
 now bounded and meated forth with  
 stones by the said Arbitrators, and  
 he shall also have, make and take to his  
 selfe, and their owne proper use all the  
 trees now standing or being, or that  
 hereafter shall grow in and upon the  
 said ground, and all other profits  
 and commodities comming of and  
 from the said ground (onely the  
 trees, briars, and herbage excep-  
 ted and fore-prized) with free liberty,  
 entry,

entry, and passage, for the felling, hewing, leading, carrying away and taking of the same Trees, and all other the said profits and commodities (except before excepted) at all and every time and times hereafter at his and their pleasure. And that the said T. R. his Heires and Assignes, and all and every other person and persons, that shall come and bring any Corne to the Mill of the said T. R. called T. Mill from the said Townes, Villages, Hamblets, or any other place inhabited, shall have free liberties, wayes, and passage for the carrying, fetching, and bringing of their Corne to the said Mill, as well over and through the said parcell of ground set forth and meated as afore said; as also through, and over other the grounds of the said T. R. afore said, in as ample and large manner and forme as the inhabitants of the said Townes, Villages, and Hamblets, or other places have been accustomed and used to doe at any time heretofore, and as is now most commonly used; and shall and may

and fasten any of their Horses,  
 Mares, or other beasts wherewith  
 they carry any Corne to the said  
 Mill to any Tree growing, or other  
 thing being in and upon the said  
 ground, so that the string, cord, or  
 rope exceed not the length of foure  
 whole yards at the most; and that  
 the said T. R. his Heires, and As-  
 signes shall, and may lawfully at all  
 and every time and times so oft as  
 need shall require, amend and re-  
 pair all and singular the wayes, and  
 every part thereof for the ease, safe-  
 guard, and passage of the inhabitants  
 of the said Townes, Villages, Ham-  
 lets, and places inhabited, coming  
 and going to and from the said Mill  
 without any let, trouble, vexation,  
 or contradiction of the said L. M.  
 his Heires or Assignes, or any of  
 them. And that the said L. M. his  
 Heires, or Assignes shall at all times  
 within the space of two yeares next  
 ensuing the date hereof, make know-  
 ledge, and suffer, or cause to be made,  
 acknowledged, and suffered, all and  
 every act and acts, thing and things,  
 as

as shall be reasonably devised, or advised by the said T. R. his Heires, or Assignes, or his or their learned Counsell, at the onely proper costs and charges in all things of the said T. R. his Heires, or Assignes, for the further assurance and better making as well of the said part, or quantity of ground containing about two Acres, as also of the said wayes in manner and forme before expressed unto the said T. R. his Heires, or Assignes for ever, according to the true effect, meaning and purport of these presents; In consideration whereof it is further ordained, awarded, deemed, and judged by the said Arbitrators; and the said T. R. doth so covenant, &c. that he the said L. M. his Heires, and Assignes shall, and may have, take, and enjoy only the grasse and herbage, with the thornes and briers yearly growing, or being in or upon the said parcel, or quantity of ground so bounded or set forth as is aforesaid. And in further consideration of the premises, the said T. R. hath paid to the said

L. M.

L. M.  
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*L. M.* at the inſealing hereof, at the requeſt of the ſaid Arbitrators, the ſumme of twenty pound, &c. in witneſſe whereof not only the ſaid parties to theſe preſent Indentures of award interchangeably have put their Scales, and ſubſcribed their names, but alſo the ſaid Arbitrators to both the partes of theſe Indentures have put their Scales, and ſubſcribed their names, the day and yeare, &c.

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*Another Arbitrement of Debt, when the parties are bound to performe it.*

**T**O all Chriſtian people, to whom this preſent writing of award indented ſhall come, *G. W. G. N. S. S.* and *T. N.* of, &c. ſend greeting in our Lord God everlaſting. Whereas divers Suits, &c. between *T. W.* and *I. S.* of, &c. for pacifying, ordering, and ending whereof, the ſaid *T. W.* and *I. S.* have bound themſelves either to other in the ſumme of &c. of lawfull English money, by their ſeverall

severall obligations, bearing date, &c. with conditions there under written, to stand to, &c. *in supra*, of the said G. I. S. and I. Arbitrators indifferently elected and chosen, as well on the part and behalfe of the said I. S. as of the said T. W. to award, arbitrate, order, rule, judge, end, and determine all, and all manner of suits, Debts, Actions, Controversies, Debts, and Demands whatsoever depending between the said I. S. and the said T. W. and W. W. his Sonne and Heire, so that the said award were made and given up in writing under the hands and Seales of all the Arbitrators, at or before the 18<sup>th</sup> of Oct. at, &c. as by the said obligations and conditions amongst other things doth and may appear. Know you now, that the said G. I. S. and I. taking upon them the charge and burthen of the said awards, and having deliberately heard the griefes, allegations, and proofes of both the said parties, doe by these presents arbitrate, award, order, decree and judge of and concerning

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the premises in manner and forme following, that is to say; First they doe award, order, decerne, and judge by these presents, that the said *I. S.* his Executors, or Administrators, or some of them, shall well and truly pay, or cause to be paid unto the said *T. W.* or his certaine Attorney, Executors, or Administrators, or some of them, at or before the, &c. at or in the, &c. two hundred pound of, &c. at or before the, &c. other two hundred pound of, &c. in full satisfaction of foure hundred pound, for payment whereof the said *I. S.* stood bound to the said *T. W.* in, and by foure severall Obligations, whereof two are already forfeited, as thereby may appeare. Also the said Arbitrators doe award, order, &c. that the said *I. B.* his Executors, and Administrators, or some of them at their, or some of their costs and charges, shall before the, &c. cause and procure, that all Suits, Bills, Plaints, and informations heretofore commenced against the said *T. W.* in any Court or Courts whatsoever, either by



by or in the name of the said *L. S.* or by or in the name of *H. S.* his Sonne, or by or in the name of our Sovereaign Lady the Queenes Majesty that now is, and of every or any of them, or by and in the name of any other person or persons, by the consents, meanes, and procurements of them, or any of them, shall thenceforth surcease, and be no further proceeded in by them, nor any of them, or by the meanes, consent, or procurement of them, or any of them. And before the, &c. be utterly discontinued and made voyd.

And the said Arbitrators doe further award, order, deeme, and judge by these presents, that for the full payment of the said summe of four hundred pound, the said *L. S.* and *G. S.* within two dayes next after tender or delivery of the one part of this present award to the said *L. S.* shall well and sufficiently make, seale, and deliver as their Deeds to the said *T. W.* in, &c. one Obligation or writing obligatory sufficient in the Law, wherein, and whereby the

said

*I. S.* and *G. S.* shall acknowledge themselves, and either of them to be joyntly and severally bounden to the said *T. W.* in the summe of foure hundred pound of, &c. with condition thereupon in due forme of Law, indorced for the sure payment of the said summe of two hundred pound, parcell of foure hundred pound, at or in the, &c. before, &c. and the other two hundred pound, residue of the said summe of foure hundred pound, at or before the, &c. and at &c. Also the said Arbitrators doe further award, &c. that the said *I. S.* his Executors, or Administrators, or some of them shall and will before the, &c. at his and their owne proper costs and charges, cause and procure to be cancelled and made void one Recognizance of two hundred pound, bearing date the, &c. acknowledged and inrolled in the Queenes Majesties high Court of Chancery, wherein and whereby the said *T. W.* standeth bounden to the said *I. S.* in the said summe, with condition thereunto annexed, that if the

the said T. W. his Heires, Executors, and Administrators, and every of them should well and truly observe, performe, fulfill, and keep all and every the covenants, grants, articles and agreements, which on his and their parts were to be observed, performed, fulfilled and kept contained and specified in one Indenture bearing date, &c. had, and made between the said T. W. on the one party, and the said I. S. on the other party, concerning the marriage of W. W. Sonne and Heire apparent of the said T. W. and A. S. Daughter of the said I. S. according to the true intent, purport and effect of the said Indenture; that then the said Recognizance to be voyd and of no effect, or else to stand, &c. as by the said Recognizance more plainly and at large appeareth. And also that the said I. S. his Executors, or Administrators, or some of them shall, and will before the Feast of, &c. deliver, or cause to be delivered unto the said T. W. his Executors, or Administrators, or some of them in the said

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now dwelling house of the said T. W.  
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venants concerning the fore said  
Marriage, cancelled or to be cancel-  
led. In witnesse whereof the said  
Arbitrators to both parts of this pre-  
sent award indented, have set their  
hands and Seales, dated the, &c.

*An Arbitrement, or award of Debt, made by  
an Earle upon submission by Bond.*

**T**O all true Christian people to  
whom this present writing of  
award indented shall come; The  
right Honourable G. Earle Marshall  
of England, &c. sendeth greeting &c.  
Whereas divers Suits, Variances,  
Controversies, and Debates hereto-  
fore have been had, moved, and de-  
pending between T. G. of T. in the  
County of I. Yeoman, on the one  
party, and F. M. of H. in the said  
County Gent. on the other party,  
for pacifying, ordering, and ending  
whereof the said T. G. and F. M. have  
bound themselves either to other in  
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the summe of foure hundred pound  
of, &c by their severall Obligations,  
bearing date, &c now last past, with  
condition there under written, to  
stand to, abide, performe, fulfill,  
and keepe the award, order, doome,  
judgement, and determination of  
the said Earle, indifferently elected,  
and chosen by the mutuall consent  
and at the earnest and humble re-  
quest, and petition of both the said  
parties, to arbitrate, award, order,  
judge, and determine of, for, and  
concerning all, and all manner of  
Actions, Suits, quarrels, debts, du-  
ties, and demands whatsoever, had,  
moved, or depending, or which  
hereafter might be had, moved, or  
depend between the said parties, by  
reason of any matter, thing, or thing  
whatsoever accrued, or growne from  
the beginning of the World, until  
the day of the date of the same Obliga-  
tion; so that the same award was  
made in writing, indented under the  
hand and Seale of the said Earle be-  
fore the nineteenth day of, &c. in  
the one part of the same writing in

denied



dented, delivered, or caused to be  
 delivered by the said Earle to the  
 said T. G. to his Executors. &c. or  
 any of them, or to their, or any of  
 their use, upon, or before the said  
 nineteenth day of, &c. at, or in the  
 now Mansion or Mannour House of  
 the said Earle, called S. in, &c. and  
 the other part thereof to the said  
 F. M. &c. *Et supra*, as by the said  
 Obligations and Conditions thereof  
 doth, and may more at large ap-  
 peare Know you now, that the said  
 Earle of his meere good will and fa-  
 vour, which he beareth to both the  
 said parties, and of the great and  
 honourable respect which he hath  
 of their future quiernesse, taking  
 upon him the charge and burden of  
 the said award, and having delibe-  
 rately at sundry times at large heard,  
 and considered the griefes, allegati-  
 ons, and proofes of both the said  
 parties, doth by these presents ar-  
 bitrate, award, order, deeme, and  
 iudge of and concerning the premis-  
 ses, in manner and forme following;  
 viz. That the said F. M. his &c. or  
 G 2 some

Some of them, shall well and truly pay, or cause to be paid unto the said T. G. his, &c. or some of them, the summe of one hundred and sixty pound, of, &c. in the, &c. in manner and forme following, viz upon, &c eighty pound thereof, and upon, &c other eighty pound thereof residue, and in full payment and satisfaction of the said summe of one hundred and sixty pound, and that in consideration thereof the said T. G. sh. R. permit, and suffer all Suits, quarrels debts, duties, and demands, growne before the date of the said Obligation to cease, and be discontinued, and no further prosecuted by him, or any other by his procurement. And furthermore for as much as the said F. M. is charged as is aforesaid, for the payment of the said sum of a hundred & sixty pound, partly by reason of a Judgement heretofore given for the said T. G. against one L. S. in the Q. Majesties Court, commonly called The Kings Bench, in an Action of Debt, in which the said T. G. hath recovered

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nd against the said L. S. two hundred eighty five pound, and foure pence, as by the Record thereof, remaining in the said Court appearance. His honour doth further award by these presents, in reliefe and ease of the said F. M. That if the said F. M. his, &c. or any of them, doe well and truly pay, or cause to be paid the said summe of one hundred and sixty pound according to the true meaning of this present award; And if the said L. S. his Heirs, &c. or some of them, shall not well and truly satisfie, content, and pay unto the said T. G. his, &c. the said severall summes above in this award appointed to be paid by the said F. M. before the severall dayes herein above mentioned; That then, and at all times after any such default of payment so to be made by the said L. S. his, &c. the said T. G. his, &c. shall permit and suffer the said F. M. his Executors, and Administrators, and every of them, at the costs and charges of the said F. M. his Executors and Administrators, effectually

to prosecute, or cause to be prosecuted, all, and every such Execution, and Executions upon the said Judgment so had for the said T. G. against the said L. S. as to them, or any of them, or the learned Counsel of them, or any of them shall seem good. And all and every sum and sums of money hereby to be obtained, to take, and convert to the onely proper use and behalfe of the said T. M. his Executors, and Administrators, without any account, recompence, or payment thereof, or therefore to be yeilded or made to the said T. G. his &c. or any of them, any thing in this present award conteyned, &c. notwithstanding. In witnesse whereof the said Earle to both the parties of this present award, hath set his hand and Seale, dated the, &c.

Note ( Reader ) all such Covenants and Conditions as are usually made for the assurance or enjoying of Lands or Tenements, Goods and Chattels may be inserted into awards, as shall seeme good unto the Arbitrators or parties.

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*Of notice of the Arbitrement.*

**A**Nd when the Arbitrators have made their award according to the submission, though they are not bound to give notice, but the parties are to take notice thereof at their owne perill, to save the forfeiture of their Bonds (as you shall finde the Law to be cleare in the first Tract of Arbitrements) yet it seemeth convenient and agreeable to equality and a good conscience that they should not be surpris'd, but that the Arbitrators should in due time before that either party be to performe any part thereof, give notice of the same unto them, lest otherwise they break their Bonds, and Covenants in that behalfe (if any such be) before they have knowledge of the same.

*The small cause and effects of Arbitraments,*

**A**ND thus by that which hath been set forth and discoursed in this and my former Treatise of Arbitraments, it doth evidently appeare, that the scope and end of Arbitraments and other Judgements is all one; and chiefly, the finall determination of Strifes, Suits, and Controversies, and so consequently their effects not much different. But the Law seemes more favourable to Arbitraments then other Judgements, insomuch as by Arbitration the strict course and tedious ceremonies of Law Suits ( which are wont most commonly to weary Suiters, and to dive somewhat too deepe into their Purses ) are cut off, and shorter decisions by them made, with little or no cost at all. But to make this good, this caveat ( Reader ) must be observed, lest this course prove bad, if not worse then a Law Suit, that there be honest, indifferent, and judicious

icious Arbitrators chosen, not  
 ly such as are just men, but such  
 are skilfull and knowing in the  
 matters in controversie, that their  
 ignorance may not make them erre,  
 and the parties suffer as much by  
 their folly, as others no doubt have  
 by their Arbitrators injustice  
 and knavery; for unequall and insuf-  
 ficient Arbitrements doe often cause  
 tedious Suits, and those no small  
 expence, so that this course which  
 the people make choise of for their  
 redress, proves often worse then the  
 disease; but I have touched upon this  
 shorly, and therefore this here shall  
 suffice.

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*An Award made by an Arbitrator touching  
 Copy-hold Land, between an Alderman  
 of London and another.*

To all Christian people, to whom  
 this present writing of award in-  
 tated shall come, H. T. of *Lincolnes*  
 in the County of *Middlesex* E-  
 quire, sendeth greeting in our Lord  
 God



God everlasting; Whereas Suit, Variance, and Debate heretofore hath been, and yet is had, moved, and depending, as well in the Queenes Majesties Court of Requests, as in divers other Courts, between R. H. Citizen and Alderman of London of the one party, and R. E. of K. in the County of M. Yeoman of the other party, of, for, and concerning the right, title, use interest, and possession of divers Lands, Tenements, and Hereditaments, with the Appurtenances, lying and being in K. within the Mannour or Lordship of T. within the said County of M. and conteyning by estimation about two hundred Acres of Land, Meadow, Pasture, and Wood, commonly called or knowne by the name of *Hebines* Land; for the appeasing, finall end, and determination of all which said Suits, Variances, and Debates, the parties aforesaid have submitted and compromitted themselves to stand to, obey, and performe the Arbitrament, Ordinance, Doome, and Judgement of the said H. T. Ar

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...or, indifferently elected, named,  
...chosen by both the said parties,  
...differently to Arbitrate, Order,  
...me, Award, and Judge, as well  
...for, and concerning the estate,  
...ht, title, interest, use, and posses-  
...on of all and singular the said Pre-  
...les, and every part and parcell  
...ereof; as also of, for, and upon all  
...anner of Actions, Suits, quarrels,  
...bts, Debates, Trespasses, and de-  
...nds whatsoever heretofore had,  
...oved, stirred, or depending between  
...the said parties from the beginning  
...the World untill the twentieth  
...y of *November* last past, as by their  
...verall writings Obligatory, where-  
...either of the said parties stand  
...ounden to the other of the same  
...ties in the summe of two hundred  
...ound, bearing date the said twenti-  
...th day of *November*, and made for  
...the true performance of the said  
...ward, more at large it doth and  
...may appeare. Whereupon the said  
...H. having taken upon him the  
...large and burden of the said Arbi-  
...ment, and having present before  
...him

him both the said parties, and having also very advisedly weighed and considered the titles, claimes, allegations, and proofes of either of the said parties to the said Premises. And upon sight and due consideration of all the Evidences, Writings and proofes shewed and made before the said H. T. by both the said parties doe Award, Arbitrate, Order, Deeme, and Judge of the Premises in manner and forme following that is to say: First, I the said Arbitrator doe Award, Deeme, Order and Judge, that the said R. E. or his Heires, at all times within the years next ensuing the date of the presents, upon lawfull and reasonable warning by the Steward, Bailiffe, or Reeve of the said Mannour of T. for the time being, shall at the next Court so to be holden, the next after such warning had, surrender and give up into the hands of the said R. H. his Heires or Assignes in open Court, according to the Custome of the said Mannour to the use of the said R. H. and his Heires.

for ever, all and singular the  
 said Lands, Tenements, and  
 hereditaments hertafter in these  
 writs mentioned, expressed, and  
 declared, that is to wit; one Man-  
 or dwelling House, wherein the  
 R. E. now dwelleth, with all  
 Offices and Buildings, &c. And fur-  
 more, I the said H. T. doe award,  
 give, decree, and judge by these  
 writs, that the said R. H. his  
 Heires or Assignes at the said Court,  
 and when the said Surrender  
 shall be so made, shall assure and  
 convey unto the said R. E. or to his  
 Heires, that shall so surrender the  
 premises as aforesaid by Copy of  
 the said Roll, according to the cu-  
 stom of the said Mannour, or  
 otherwise as by the said R. E. his  
 Heires and Assignes, or any of them,  
 by his or their learned Counsell,  
 shall be reasonably devised or advised,  
 at the proper costs and charges  
 of the said R. E. his Heires and  
 Assignes, not altering by the said  
 award or assurances so to be de-  
 vised or advised as is aforesaid, any  
 Custome,

Custome, Liberty, or Jurisdiction  
 of the said Lordship, Mannour,  
 other the Premises, with all and  
 singular the said Lands, Tenements,  
 Hereditaments, and all other  
 Premises, with their appurtenances  
 whatsoever, before by these prelates  
 ordered, and judged to be surren-  
 dered as is aforesaid (four Acres  
 Land now in the occupation of  
 parcell of the Premises to be cho-  
 sen by the said R. H. &c. onely ex-  
 cepted and fore-prized) to have and  
 hold the same Lands, Tenements,  
 and all other the Premises with  
 appurtenances (except before ex-  
 cepted) unto the said R. E. and  
 his Heires Males, incorrupt will  
 in the fourth degree of Con-  
 sanguinity, according to the an-  
 cient Custome of the said Mannour,  
 if it happen that the said R. E.  
 decease before the said Surren-  
 der made as is aforesaid. Then to  
 and to hold the said Premises  
 with the appurtenances, to  
 Heires of the said R. E. which  
 shall surrender the same, and

Heires males incorrupt within  
the fourth degree of Consanguinity, &c.

*Award, reciting that either of the Parties stand bound to other to performe the Award, and that the Award is made before the prefixed time in the Obligation, and with the full consent of both the parties.*

TO all Christian People, to whom this prelent writing intented of award shall come, R. W. and R. C. send greeting in our Lord God everlasting. Know yee, that whereas Varience, Strife, Debate, and Controversie hath heretofore been had, moved, and stirred between A. B. of C. and D. E. of F. for, and concerning the right, title, interest, use, possession, and occupation of, &c. for the appeasing and ending whereof, either of the said parties by their mutuall assents, covenants, and agreements, have submitted, compromitted, and bound themselves

themselves either to other by their  
 severall writings Obligatory, bearing  
 date, &c. in the summe of, &c.  
 to stand to, abide, obey, observe,  
 performe, fulfill, and keepe the A-  
 ward, Arbitrement, Ordinance,  
 Doome, and Judgement of us, &c.  
 Arbitrators indifferently elected  
 and chosen between the said parties  
 to arbitrate, order, &c. of, and for  
 the Premises, as by the said severall  
 Obligations, with conditions for  
 the performance thereof more at  
 large appeareth. Whereupon we the  
 said Arbitrators taking upon us the  
 labour, busynesse, and charge of the  
 same award, and willing to set the  
 said parties at a finall peace, unity,  
 and concord for, and concerning  
 the Premises, have by good advice  
 and deliberation seen, heard, and  
 thoroughly examined both their ti-  
 tles, allegations, evidences, and  
 proofes, in, and to the said Premi-  
 ses; and thereupon before the day  
 and time appointed unto us by the  
 said Obligations, for the making,  
 giving up, and finishing of the  
 award,



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Award; we the said Arbitrators by and with the full Assent, Consent, and Agreement of both the said parties, do make, publish, declare, and give up this our present Award betwene the said parties of, for, and concerning the premisses, in manner and form following: First, we award, ordaine, deeme, and judge, That &c. Also we award &c. And finally, we award, ordaine, deeme, and judge, &c. In witnesse whereof we the said Arbitrators, and also both the said parties to the Award, have interchangeably put our Hands and Seales, the tenth day of &c. in the twentieth yeare of the Reigne of &c. by the grace of God of England &c. King, Defendor of the Faith, &c.

**H** **Queries.**



### Queries.

**Certaine Queries or doubtfull Cases collected by the same Author out of our old and new Bookes, and put under their proper Heads or Titles; together with the Books cited pro and contra, very usefull and necessary for all Students in the Law.**

### Acceptance.

**A** Man makes a Feoffment upon condition of reinfoffment, whether acceptance of another estate than is contained in the Condition, shall be a Dispensation of the Condition, or not? *Quere.* And see Title Conditions. 9.

**A Bishop makes a Lease for years rendring Rent, after makes a new Lease**

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Lease, with confirmation of the Deane and Chapter, and dies, if by his death the first Lease be void, so that the Successor cannot make it good by acceptance of the Rent, or not? *Quere.* 32 H. 8. *Dyer.* fo. 46. pl. 9.

Tenant in taile makes a Lease for yeares to commence after his death, rendring rent, and dies, the issue Accepts the Rent. Whether this shall barre his entry or not? *Quere.* *Dyer.* fo. 179. a. pl. 7. fo. 69. pl. 30. fo. 246. a. pl. 69. *Choke* upon *Littleton*, fo. 44. a. Pl. Com. fo. 430. & 437. a.

Tenant in taile makes a Lease for yeares rendring 20 s. Rent, and after releases 19 s. and dies, and the Issue accepts the 12 d. whether he may distraine for the 19 s. more or not? *Quere.* 13 & 14 of the *Queene* *Dyer.* fo. 304. 53.

## Accord.

**W**Hether an Accord with satisfaction be a good Plea in an Attaint, or not, *Quere* 13. E. 4. 1. Br. Attaint. 91. 13. E. 4. 5. Br. Attaint. 118. 35. H. 6. 30. Br. Attaint. 12. 6. E. 6. Dyer. fo. 75. pl. 27. 6. Rep. fo. 44 a.

## Acquittance.

**A** Man bargaines and sels a Manour for 20 l. solvend. at such a Feast; and in the Indenture there are divers Covenants; for observance of all which Covenants and Payments, he bindes himselfe in 40 l. whether in debt for this, the Defendant may plead payment without an Acquittance, or not? *Quere* 26. H. 8. Dyer. fo. 6. pl. 3. 28. H. 8. Dyer. fo. 25. pl. 160.

Admini-

Administrator and Administration.

**A**N Executor payes 20 s. for the Testator, and retaines a horse of the Testators of the same value; whether this be an Administration or not? *Quere* 21. E. 4. 21. Br. Title Administration 37.

Whether Probate of a Will, or taking Letters of Administration without doing of any more, shall be said an Administration or not? *Quere* 26. H. 8. 7. Br. Administration 2. 20. H. 6. 14. Br. Administration 5. 34. H. 6. 14. Br. Administration 7. 37. H. 6. 27. Br. Administration 31.

Annuity.

**W**Hether an Annuity may be granted over, or not? *Quere* 41. 3. 27. Br. Annuity 8. 19. H. 6. 42. Br. Annuity 19. 21. E. 4. 20. Br. Annuity 37. H. 4. 5. Br. Deputy, &c. 4.

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Whether



Whether a release of Actions reals, be a barre in an Annuity or not? *Quere* 2. H. 4. 13. Br. Annuity 43. 11. H. 4. 85. Br. Debt. 66. See Dyer. fo. 24. pl. 149. an inheritance in a *nomine pena*. See David Reports, for 6. a. and Title Release.

## Appeale.

A Man for Felony adjudged to death, and pardoned, is after put to answer to an Appeale of Felony, for a Felony done before, and whether he may or no? *Quere*: For the Appeale was once determined, Br. Appeale 10. 6. H. 4. 6. Br. Coram 11. & 147. Br. Charter of pardon. 44.

Whether a Release of all Actions Reall and Personall, be a Barre in an Appeale of death, or not? *Quere*. Littleton, Sect. 304. 9. H. 4. 21. Br. In Appeale 29.

An Appellor dies within the year, whether the Appeale shall descend to others

others or not? *Quere.* 11. H. 4. 11: Br. Appeale 30. 9. H. 7. 5. Br. Appeale 88. 17. E. 4. 1. Br. Appeale 104. 38 H. 6. 12. Br. Appeale 144. 9 H. 7. 5. Br. Appeale 144. 16. H. 7. 15. Br. Appeale 156. *Dyer.* fo. 69 pl. 31.

A woman who hath Title of an Appeale, *De morte viri*, takes husband, she loses her Appeale; but if the woman convicts the Defendant, and then takes husband, whether in such case she may demand execution or not? *Quere.* 1. M. 1. Br. Appeale 102. 11. E. 4. 72. 73. Br. Appeale 112. 11. H. 6. 8. Br. Appeale 148.

Appertionment.

A Man makes a Lease for yeares of Land, and of a stock of Sheepe, rendering certaine Rent, all the Sheep die, whether the Rent shall be apportioned or not? *Quere.* 35. H. 8. *Dyer.* fo. 56 pl. 15. 12. H. 8. fo. 11. b. pl. 5. 5. Rep. fo. 17. a. *Spencers Case.* 7. H. 7. 6. 5. Br. Appertionment. 24. 4. of the *Quene Dyer.* fo. 212. pl. 37. 38.

## Arbitrement.

**W**Hether Arbitrators may arbitrate Free-hold or not? *Quere.* 14. H. 4. 18. & 19. Br. Arbitrement. 15. 12. Aff. pl. 25. Br. Arbitrement 30. 21. E. 3. 26. Br. Arbitrement. 53. See my first Treatise of Arbitrements, in the beginning thereof.

**A** man is bound to stand to the Arbitrement of I N. who arbitrates that he shall pay to K. whether the obligee may have debt upon the Obligation, and upon the Arbitrement also, or not? *Quere.* 33. H. 62. Br. Dec. 23. See my Treatise of Arbitrements abovementioned.

## Arrearages.

**A** Man recovers a Mannour in a *Precipe quod reddat*, and doth not sue execution in a yeare or two, and after sues execution, whether he shall have

have the Arrearages and Services due after the Judgement or not? *Quare.* 48. E. 3. 16. Br. Arrearages 5. See the like Case immediately following.

Grantee of a Rent Charge in Fee distraines for Arrearages, and then grants it over, whether the Arrearages be lost or not by the Assignement. *Quere.* See my Rep. pa. 103. pl. 178.

A man who hath Title of Entry for non-payment of Rent upon a Lease, doth not enter by the space of a year or two after the forfeiture, what remedy for the Rent incurred after the Title of entry. *Quare.* 6. H. 7. 3. Br. Arrearages 11.

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*Assets by descent, and Inter-maines.*

And descends to an Heire, and he Aliens it and after re-purchases it, whether it shall be Assets or not? *Quare.* 26. H. 8. 1. Br. Assets, &c. 1. 6. 27.

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Land of 40 s. a year descends charged with the Rent of 26 s. by a year, this is not Assets of 40 s. *tamen hoc videtur*; where the charge is of an estate of Freehold, but here the Charge is but a Chattell, and the Freehold not charged. *Ideo Quere.* 43. E. 3. 9. Br. Assets 9.

Whether a Reversion shall be Assets in Debt, or a *Formedon*; or a rent upon a Lease for life, shall be Assets in a *Formedon* or not? *Quere.* 40. E. 3. 38. Br. Assets 12. 7. H. 6. 3. 4. Br. Assets 17. 16. E. 3. Br. Assets 23. 38. E. 3. 32. Br. Assets 30. Cooke upon Littleton, fo. 374. b.

An Executor payes a Debt of his proper goods, and retains goods of the Testators to the value, whether these shall be Assets or not? *Quere.* 21. E. 4. 21. 22. Br. Assets. 6. 20. H. 7. 4. 5. Br. Assets inter maines. 12. See Cooke upon Littleton, fo. 283. a.

Whether a Tenancy escheated after the death of the Ancestor, shall be

Assets to the Heire, for to Surrender him by a Warranty or not? *Quere.* *Keilway.* 104. pl. 14. See *Perkins*, fo. 20. *Cooke* upon *Littleton*, fo. 117. a. and fo. 118. *Dyer.* pl. 15.

If an Executor release a Debt or discharge one in Execution, whether this shall amount to as much as Assets received or not? *Quere.* *Hobarts Rep.* pl. 81.

Attachment of Goods.

Whether an Attachment in Court Baron be forfeited by the non-appearance of the party or not? *Quere.* 28. H. 6. 9. Br. Attachment 2. 34. H. 6. 49. Br. Attachment 19.

Attaint.

Whether an Attaint lyes in a Writ of Redress or not? and whether the Redress be more than an Inquest of Office? *Quere.* 18. H. 8.

H. 8. 1. Br. Attaint. 1. 2. H. 4. 2. Br. Attaint. 22. 40. Aff. pl. 23. Br. Attaint. 79. 11. Rep. Sir Jo. Heydons Case.

Whether an Attaint lyes in a Writ of inquiry of waste or not? *Quere.* 48. E. 3. 19. Br. Attaint. 21. 2. H. 4. 2. Br. Attaint. 22. 11. Rep. Sir Jo. Heydons Case.

In an Attaint one of the Petty Jury pleades an Accord, with satisfaction made betwixt the Plaintiffe and the Defendant, whether an Accord with satisfaction be a good Plea in an Attaint, and whether the petty Jury may plead that which is betwixt the Plaintiffe and Defendant or not? *Quere.* 13. E. 4. 1. Br. Attaint. 91. 13. E. 4. 5. Br. Attaint. 118.

## Attournement.

**L**Essee for life is disseised by the Grantee of the reversion, and after recovers in an Assize; whether this be an Attournement or not, *Quere.*



2. Rep. Tookers Case the latter end:  
 upon Littleton fo. 319. a. 18. E. 3.  
 8. b. 6. Rep. 69. b. Sir Moyle Finches  
 Case.

Bayle and Mainprize.

**W**Hether the Bayle may render  
 the body of the Defendant in  
 the Common Bench after a Writ of  
 Error brought by him? or Whether  
 the Bayle be in this case forfeited or  
 not? *Quere. Hobarts Rep. po. 157. pl. 142.*

Baylie.

**A** Man diffraines as Baylie, and is  
 not Baylie, and after the Lord  
 agrees to it, whether it be good or  
 no? *Quere. 26. H. 8. 8. Br. Baylie, &c. 1.*  
*7. H. 4. 30. Br. Baylie, &c. 4.*

Baron

Baron and Feme.

Baron and Feme.

Baron and Feme.

**B**aron and Feme obligees, the Baron onely brings Debt, whether it will lye or not? *Quere.* 3. H. 6. 36. Br. Baron and Feme, 2. 43. E. 3. 10. Br. Baron and Feme, 14. 39. E. 3. 5. Br. Baron and Feme 55. 43. E. 3. 8. and 16. Br. Baron and Feme 64.

Baron and Feme bound in an Obligation of an 100 l. for a Release made to them of Land *de jure uxoris*, the Baron dies, whether this Obligation shall binde the Feme or no? *Quere.* 44. E. 3. 33. Br. Baron and Feme, 77.

Whether a man may be bound to pay money to his wife or not? *Quere.* for I doubt of it. 27. H. 8. 27. Br. Conditions. 8. Cooke upon Littleton, fo. 208.

Whether Baron and Feme may be Conspirators or not, *Quere.* 38. E. 3. 3. Br. Conspiracy 14.

In an Aynvry against a Baron and Feme, whether the Baron by himself, or whether the Baron and Feme together may disclaime or not, *Quere.*

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In an Annuity the Defendant said that a Tenth was granted to the King by the Clergy, and these Arranges were leaved by the Collector, as the portion of the Plaintiffe due to the King, Judgement, &c. whether this shall barre the Plaintiffe or not. *Quere.* 21. H. 7. 12. and 16. Br. Barre. 49. & 50.

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Whether he which is barred in Debt against an Executor, upon a fully administred found against him, shall have a new Writ of Debt upon Assets come after or not. *Quere.* 4 H. 6. 4. Br. Debt 106. and Executors 85. H. 6. 36. 37. Br. Executors 70. See the 8. Rep. fo. 134. a. b.

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Tenant

**T**enant for life the Reversion to an Idiot, an Uncle Heire apparent to the Idiot leavies a Fine, and dies, Tenant for life dies, the Idiot dies, whether the issue of the Uncle who leavied the Fine shall be barred by it or not. *Quere.* See my *Rep. pa. 94. pl. 164. & pa. 146. pl. 216.*

*Cessavit.*

**I**n Ord Mesne and Tenant, the Mesnecesses in payment of Services by two yeares, and after purchases the Tenancy, whether a Cessavit lies against him or not. *Quere.* Keilow *Casus incerti temporis, fo. 104. pl. 15. See 27. H. 8. 28. Br. Cessavit. 1.*

*Champerty.*

**C**ouncil agrees with his Clyer before Action brought, that he shall have part for his wages, whether this be Champerty or not. *Quere.* 12. H. 4. 26. 13. H. 4. 16. & 17. Br. Champerty 3.

The Statute speaks onely of Plea  
and therefore whether *Champerty* lyes  
upon a Suit in a *Subpoena* or not. *Quare.*  
5. H. 7. 2. Br. *Champerty* 6.

*Charge.*

A Man makes a Lease for life, and  
charges the reversion which af-  
ter comes to the Tenant for life by  
discent, whether he shall hold it char-  
ged or not. *Quare.* 9. E. 4. 18. Br.  
*Charge.* 16. & 29. & Br. *Estates.* 25. See  
*Oyer. fo. 141. pl. 44.*

A Disfeisor grants a Rent Charge,  
the Disfeisee confirms the Grant,  
and after enters upon the Disfeisor,  
whether the Charge be avoided or  
not. *Quare.* See *Title Confirmation* 2.

*Charter*

## Charter of Pardon.

**W**Hether a Pardon of the King  
of Felony, Homicide, &c.  
doth pardon Murder or not. *Quere,*  
See my *Rep.* p. 213. pl. 250.

## Clergie.

**W**Hether a Bastard may have his  
Clergie or not. *Quere.* 11. H.  
4. 8 Br. *Bastardy*, 46. & Br. *Clergie* 22.

Whether a man *captus oculis*, shall  
have his Clergie or not. *Quere.* Br.  
*Clergie* 21.

## Commoner and Common.

**W**Hether a man may borrow  
another's Beasts; to take  
Seisin of Common, so that he chase  
them out presently, or not. *Quere.*  
45. E. 3. 25. Br. *Commoner*, &c. 5. 25.

Aff.

*Aff. pl. 84. Br. Commoner, &c. 40. & Br. Title seisin, 5. & 36.*

Conditions.

**A** Man Covenants that his eldest Sonne shall marry the Daughter of another by such a day, and he dies before the day, whether the second Sonne that now is may perform the condition or not. *Quare. 27. H. 8. 14. 15. Br. Conditions 7.*

Whether a release of a right, &c. upon a condition subsequent, be good or not. *Quare. 21. H. 7. 24. Br. Cond. 84. 17. Aff. pl. 2. Br. Cond. 103. 31. Aff. pl. 32. Br. Cond. 115. Cooke upon Littleton, 1. fo. 274. b. 43. Aff. pl. 12. Br. Release 39.*

**A** man is bound to infeoffe a woman by a day, and before the day he himselfe marries the woman, he may make a Lease for a moneth to a stranger, the remainder to his wife, and this is a good performance of the condition,



dition, by Fisher *tamen* Quere. 4. H. 7.  
4. Br. Feoffments of Lands 38.

A man makes B. & C. his Executors, *proviso* that B. shall not administer, whether this *proviso* be good or not. Quere. See Title Executors 4.

A man makes a gift in taile upon condition that the Donee shall not make a Lease for three lives, or twenty one yeares, according to the Statute of 32. H. 8. whether this be a good condition or not. Quere. 10. Rep. Coke upon Littleton, fol. 223. a. fo. 39. a. 33. H. 8. Dyer fol. 484. 9.

Lessee for yeares Covenants and grants to the Lessor, that if he, his Executors or Assignes, a'ien the terme, that it should be lawfull to the Lessor and his Heires to enter the Lessee makes his wife Executrix and dies who takes husband, and the husband aliens, whether the Grant and Covenant made of the part of the Lessee be a Condition or not. Quere and whether the Condition be

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broken by the alienation of the second husband or not. *Quære.* 28. H.8. *Dyer. fo. 6. pl. 1.* See *Dyer. fo. 45. pl. 1. and 3.*

A man makes a Lease for yeares, upon condition that if the Lessee during his life, assigns his terme, that it should be lawfull to the Lessor to re-enter, the Lessee devises it by his Testament, whether this be a breach of the Condition or not, *Quære.* 31. H. 8 *Dyer. fo. 45. pl. 3.*

Tenant in Taile makes a Feoffement upon condition to make back an Estate to him and his wife in taile, the remainder *T. M. Filio Meo, &c.* the remainder *Sibill. filia mee*, the Feoffees make a Feoffement to the first Feoffor and his wife in taile, the remainder to *T. M. Filio meo*, the remainder *Sibill. filia mee*, the Feoffor dies, and *T. M.* enters for Condition broken. 'twas holden that the Condition was broken, becaule that *Sibill. Filia mee* cannot be intended the Daughter of the first Feoffor, but whether the Condition be extinguished, or onely

suspended by the acceptance of the Feoffor, this is the question, and of this *Quere.* 31. H. 8. Dyer. fo. 45. pl. 4. 5. E. 6. Dyer. fo. 69. pl. 36. See 8. H. 7. 7. Br. Conditions 134. 22. E. 4. 17. Br. Conditions 167.

Lessee upon condition that he shall not do waft, he suffers waft, whether this be a breach of the Condition or not. *Quere.* 10. and 11. of the Queen, Dyer, fo. 281. pl. 21.

Gavelkinde Land is devised to the eldest Sonne, upon condition that he shall pay 100 l. to the wife of the Devisor, he failes of payment, whether the younger Sonne may enter in the moiety as by an implied limitation or not. *Quere.* 14. & 15. of the Queene Dyer. fo. 316. pl. 5. See the 3. Rep. fol. 21. a. Borastons Case.

A man grants a Rent *de novo* in Fee, upon condition that the Grantee shall not alien, whether this be a good condition or not. *Quere.* Cooke upon Littleton, fo. 223. a. See 2. Rep. fo. 70. 76. & 78.

Confir-

## Confirmation.

**B** Aron and Feme Donees in speciall  
Taile, the Baron leavies a Fine,  
and dies, he in reversion confirmes to  
the wife her Estate, to have to her  
and to her Heires of her body by the  
husband ingendred, what is wrought  
by this Confirmation. *Quere. 9 Rep.*  
*Beaumonts Case. See my Rep. p. 145.*  
*pl. 216.*

## Copy hold.

**T** He King grants a Copy-hold for  
life Generally, whether this de-  
stroyes the Copy-hold or not. *Quere.*  
*my Rep. p. 206. pl. 246.*

## Corone, &amp;c.

**A** Man bailes goods to another to  
keepe, and after the owner that  
bailed them, takes them againe felo-  
niously,

niously, whether this be Felony or not. *Quere.* 7. H. 6. 42. Br. *Corone* 45. 5. H. 7. 18. Br. *Corone* 142. 29. H. 6. Br. *Corone*, 216. 13. E. 4. 9. Br. *Corone* 160.

Whether a man may feloniously steale goods in his owne custody or not. *Quere.* 21. H. 7. 14. Br. *Corone* 58. 12. *Aff. pl.* 32. Br. *Corone* 76. 3. H. 7. 12. Br. *Corone* 137. 13. E. 4. 9. Br. *Corone* 160. See *Dyer fo. 5. pl. 2.* and See now the Statutes of 21. H. 8. cap. 7. and 5. of the Queene, cap. 10. by which 'tis made Felony for a Servant to steale goods in his custody to the value of 40 s. &c.

A man delivers an Obligation to his Servant to receive 20 l. of the Obligor, and the Servant receives it, and after runs away, &c. whether this shall be Felony within the Statutes of 21. H. 8. and 5. of the Queene before cited or not. *Quere.* Because that the money was not delivered to him by his Master, as the Statutes speake. 25. H. 8. *Dyer fo. 5. pl. 2.*

Three men are appealed in Felony, two as principals, and the third as accessory, one of the principals is attainted, and the other not, whether the accessory may be arraigned before the Attainder of the other or not. *Quere. Keilwy Casus incerti temporis. fo. 107. pl. 23.*

## Corporations.

**W**Hether a Corporation may retaine a Servant without Deed or not? and what Acts they may do without Deed, what not? *Quere. 14. H. 8. 2. 29. Br. Corporations 34. 4. H. 7. 17. Br. Corpor. 49. 4. H. 7. 6. Br. Corpor. 47. 7. H. 7. 9. Br. Corpor. 50. 12. H. 7. 25. 26. Br. Corpor. 51. 12. E. 4. 9. 10. Br. Corpor. 56. 18. F. 4. 8. Br. Corpor. 59. 21. E. 4. 76. Br. Corpor. 66. 18. E. 4. 8. Br. Corpor. 73. 13. H. 8. 12. Br. Corpor. 83. Pl. Com. 91. 92. 4. Rep. 119. 6. Rep. 38. 10. Rep. 67, 11. Rep. 79. Dyer. fo. 102. pl. 83.*

The

Three

The King grants a Manour *bonum*  
*bus de I. heredibus & successoribus suis*  
 rendring Rent, whether this doth  
 make them a Corporation or not;  
*Quere.* And *quere* if it had been with-  
 out rendring any rent: See *lit. Gracia*  
*of the King 1.*

## Covenant.

A Man Covenants for himselfe,  
 not naming his Executors whe-  
 ther this shall binde his Executors or  
 not. *Quere.* See *Title Executors 2.*

A. Covenants with B. to infeoffe  
 him of the Mannour of D. before  
 Easter, discharged of all former in-  
 cumbrances, but Leases of which the  
 antient Rent is reserved, after, and be-  
 fore the Feoffement, he makes new  
 Leases rendring the antient Rent,  
 whether this be a breach of the Co-  
 venant or not. *Quere 3. & 4. P. & M.*  
*Dyer. fo. 139. pl. 34.*



**A** man upon Covenants of Marriage, covenanteth that immediately after his decease, the Land shall inure and remaine to his Sonne, and whether this Covenant doth raise a use to the Sonne or not. *Quere.* See Title 1.

Countermand.

**A** Feme sole commands I. to make an Obligation in her name, and deliver it as her Deed, and before execution of it she takes husband, and after tis executed, by some this will binde her, because she had power *tempore mandati.* *Quere.* whether it be not countermanded by the intermarriage, 14. E. 4. 2. Br. Coverture, &c. 27. H. 6. 7. Br. Relation 1. 3. Rep. fo. 4. Rep. fo. 60. & 61. Perkins 140. Rent, 1.

**Whether a Disseisin shall countermand a devise or not.** *Quere.* 39. H. 6. Br. Devise 15.

A Feme sole Licenses a man to hunt in her Warren, and after takes husband, whether by the inter-marriage the License be countermanded or not. *Quere* 22. H. 6. fo. 52. Br. Licenses, &c. 6. 3. H. 8. Keilway, fo. 163. a. 4. Rep. fo. 60. & 61.

A Lease at will is made to a Feme sole who takes husband, whether by this the Lease be determined or not. *Quere*. 3. H. 8. Keilway fo. 162. pl. 4.

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Court Baron, County Court, and Hundred.

A Man brings debt upon a Recovery in Court Baron, whether the Defendant may plead *nul tiel Record*, or not, or whether he ought to say, *nul tiel Recovery*. *Quere*. Br. Court Baron, &c. 1. 34. H. 6. 42. Br. Court Baron 14. 9. E. 4. 14. Br. Court Baron 16. See my Reports, pa. 15. pl. 35.

Upon a Recovery in debt in a Court Baron, the Bailly cannot sell the Goods of the Defendant taken in execution

tion, except by custome, and whe-  
 ther he ought to keepe them as a di-  
 recte till the plaintiffe be satisfied of  
 the Debt, or whether he may deliver  
 them to the Plaintiffe in execution  
 or not *Quere.* 22. *Aff.* pl. 27. *Br. Court*  
*Baron, &c.* 7. 38. *E.* 3. 3. *Br. Court Baron*  
*4. H. 6. 17. Br. Court Baron 6. 1. E. 4.*  
*Br. Court Baron 10.*

A man brought Debt upon a Re-  
 covery in antient Demeasne, which  
 is a Court Baron, whether the De-  
 mandant might wage his Law or not.  
*Quere.* See *Br. Title wager of Law 10.*

Whether a Hundred may be par-  
 cell of a Mannour or not. *Quere.* 27.  
*H. 6. 2. Br. Parcell &c. 2. & Br. scire fa-*  
*las 7. See Keilway, fo. 151. pl. 51.*

### Customes.

BY the Custome of London a man  
 cannot wage his Law for bourd-  
 ing, but notwithstanding in Debt  
 brought at *Westminster*, the better opi-  
 nion

nion seems to be, that there he shall have his Law, because that such Customs are allowable onely in the places where they do arise. *I ameh Quare* 1. E. 4. 5. Br. Customs 43.

The Inhabitants of a Parish have a Chappell of Ease, and a Custome that those within such a Precinct ought to finde a Rope for the third Bell, and to repaire part of the Mother Church, in consideration of which they have been freed from payment of any Tithes to the Mother Church, whether this be a good Custome or not. *Quare*. See my Reports, p. 9. pl. 151.

### Damages.

**W**Hether in Detinue for diverse severall things, the Jury may give Damages in grosse, or whether they ought to give them severall or not. *Quare*. 1. E. 5. 5. Br. Dam. 1. R. 3. fo. 1. 3. H. 6. 43. Br. Detinue Goods 4. & 48.

A man distraines for a penalty assessed by Custome, and distrainable by Custome, and upon a Replevin brought; Judgement was given for the Avowant, and Damages assessed, and whether Damages ought to have been given or not. *Quere.* See my Reports, *pa.* 38. *pl.* 64.

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*Darreine Presentment.*

A Man seized of a Manour with an Advowson appendant in right of his wife, presents, and after hath issue, and the wife dies, the Church becomes void, and he presents and is disturbed, whether he shall have an Assize of Darreine Presentment or not. *Quere.* *Keilway Casus incerti temporis, fo.* 118. *b.* *pl.* 61.

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*Debt.*

Whether the Heire of the Heire, or the Executors of the Heire shall be charged in debt upon an Obligation

ligation made by the Ancestor or not.  
*Quere. Pl. Com. fol. 441. a.*

A man is bound to stand to the Arbitrement of I. N. who arbitrates that he shal pay 10<sup>l</sup>. whether the Obligee shall have Debt upon the Obligation, and upon the Arbitrement al-  
 10. *Quere. 33. H. 6. 2. Br. Debt 23.*

In Debt upon a Lease for yeares, the Defendant said that the Plain-  
 riffe was bound to Reparations by Covenant and because that the Tenements wereruinous, he commanded him to amend the Tenements with the Rent, the which he did, Judgement if Action, &c. and whether this be a good Plea or not. *Quere. 34. H. 6. 17. Br. Debt 27. 14. H. 4. 27. Br. Debt 72. 12. H. 8. 1. Br. Debt 226.*

Whether Debt lyes upon a Fine or an Amerciament in a Leete or not. *Quere. 7. H. 6. 12. Br. Debt 85. 9. E. 4. 10. Br. Debt 114. 10. H. 6. 7. Br. Debt 180. 11. H. 7. 13. Br. Debt 210.*

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house,  
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Abbas promises in Marriage  
with his Daughter whether debt lies  
for it or not. Quere. 22. Aff. 20.  
In Debt 155. 14. Aff. 5. Br. Debt 164.  
17. E. 4. 4. Br. Debt 162. 19. E. 4. 32.  
Br. Debt 105.

Deeds Inrolled

Hecher a Deed Inrolled shall  
be voided by Durelle or not.  
Quere. 21. E. 8. 43. Br. Fairs. Inroll 3.  
19. H. 6. 16. Br. Fairs. Inroll 4. 7. E. 4. 15.  
Br. Fairs. Inroll 11. 16. H. 7. 5. Br. Fairs.  
Inroll 17.

Demands and demandable.

The Mannor of B. extends into  
A. and D. and is demanded per nos  
in A. in B. whether he shall re-  
cover only that which is in B. or  
not. Quere. 9. E. 4. 17. Br. Demand 505.

Grantee of a Rent to be paid at the  
house, and if the Rent be behinde,



and lawfully demanded at the House, then to be lawfull for the Grantee to distraine, whether a distresse upon the Land in such case be a sufficient demand or not. *Quere.* See my *Rep.* *pa.* 147. *pl.* 218.

*Denizen and Alien.*

**A**N English man goes beyond the Sea, and marries a Feme alien, whether this makes her of the Allegiance of the King and her Issue inheritable or not. *Quere.* *Br. Denizen and Alien* 21. See my Reports *pa.* 91. *pl.* 130.

*Detinue of Goods.*

A man findes Goods, and delivers them over before Action brought, whether this shall excuse him in an Action of Detinue brought against him for the Goods or not. *Quere.* 27. *H.* 8. 13. *Br. Detinue of Goods*, 1. 39. *H.* 6. 2. *Br. Detinue* &c. 33. 12. *E.* 4. 8. *Br. Detinue* &c. 0.

Whether

Whether Detinue for Beasts taken  
in Withernam lyes or not. *Quare.* 11.  
H. 4. 10. Br. Detinue of Goods 18.

## Disclaimer.

IN an Avowry against a Baron and  
Feme whether the Baron and Feme  
may disclaime or not. *Quare.* 35. H.  
6. 10. Br. Disclaimer 6. 43. E. 3. 5. Br.  
Disclaimer 8. 10. E. 4. 2. Br. Disclaimer  
37. 4. H. 5. Br. Disclaimer 36. 14. H. 4.  
18. Br. Disclaimer 38. 21. H. 7. 20. Br.  
Disclaimer 43. 9. H. 6. 32. Br. Disclaimer  
44. 14. H. 4. 18. Br. Disclaimer 46. 30.  
Ass. pl. 10. Br. Disclaimer 50.

A man avowes, and the Plaintiff  
acknowledges the Avowry, whether  
in another Avowry he may disclaime  
or not. *Quare.* 2. E. 4. 16. Br. Disclai-  
mer 23.

Whether the Demandant may en-  
ter upon the Disclaimer of the Te-  
nant or not. *Quare.* 4. E. 4. 38. Br.  
Disclaimer 24. 5. E. 4. 1. Br. Disclaimer 25.

Lord Mesne and Tenant, the Mesne cannot disclaime in an Avowry, for he cannot lose the Land of the Tenant; but whether they may joyne in Disclaimer or not. *Quere.* 12. E. 4. 16. *Er.* Disclaimer 30. 9 H. 6. 27. *Br.* Disclaimer 1. 21. E. 4. 47. *Br.* Disclaimer 31. 12. E. 4. 13. *Br.* Disclaimer 28. 13. E. 4. 8. *Br.* Disclaimer 42.

## Discontinuance.

**G**randfather, Father, and Sonne, the Grandfather Tenant in Taile makes a Leate to another for his life, and dies, the Father grants the reversion in Fee, the Tenant for life Attourmes, and dies, the Grantee enters, and after the Father dies, whether this be a discontinuance to the Sonne or not. *Quere.* *Keilway*, fo. 120. pl. 68. *Cooke* upon *Littleton*, fo. 333. See *Dyer* fo. 98. pl. 55. and *Littleton*, Sect. 637, 638.

**T**enant in taile makes a Lease for years, the remainder to the Donor in Fee, whether this be a Discontinuance

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nuance in Fee or not. *Quæ. 28.H.8.*

*Dyer. fo. 8. pl. 15. & fo. 9. pl. 121.*

## Dispensation.

**A** Man makes a Feoffment upon condition of re-infeoffment, whether acceptance of another Estate than is contained in the Condition, shall be a dispensation of the breach of the condition or not. *Quæ. See Title Conditions.*

## Dissimor and Disseisin.

**A** Man enters upon the Possession of the King, whether this shall be a Dissimor to the Tenant of the Freehold or not. *Quæ. See Assize. In Disseisor & Disseisin. See Title 4. In Disseisor & Disseisin.*

**A** Disseisee leaves a Fine to a stranger, whether this gives the right to the Disseisor or not. *Quæ. See Title Fines of Lands. 2.*

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Distresse

## Distresse.

**W**Hether a man upon a returne irreplegiabie, may worke the distresse or not. *Quere.* 10. & 11. of the *Queene Dyer*, fo. 280. pl. 14.

Grantee of a Rent Charge in Fee, distraines for Arrearages, and then grants it over, whether the Arrearages are lost or not. *Quere.* See Title *Arrearages*.

## Distribution.

**W**Hether the Ordinary, after Debts and Legacies paid, may inforce a Distribution of the residue of the Estate or not. *Quere.* See my *Rep.* pa. 65. pl. 162. & pa. 93. pl. 138. and see *Hobarts Reports*.

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## Dower.

**A** Man makes a Lease for years rendering Rent, and after takes wife and dies, whether she shall be indowed of the Rent as well as of the reversion, or not. *Quere.* 1. E 6 Br. Dower 89. Perkins fo. 69. pl. 348. and *Case upon Littleton, fo. 32. a.*

Whether a Writ of Dower lies against the Committee of a Ward of the King, and whether Assignment of Dower be good by him or not. *Quere.* Keilway, fo. 133. pl. 112.

## Dureffe and Manasse.

**W**Hether a Deed inrolled shall be avoided by Dureffe or not. *Quere.* See Title Deeds inrolled.

A man makes a Writing by Dureffe or Manasse, and after he being at large, a Defeasance is made by Deed

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indented betwixt the Obligor and Obligee, whether this shall estoppe the Obligor to say that it was made by Durelle, &c. or not. *Quare.* See Title Estoppel.

*Embasement of Monies.*

**W**Here Monies shall be paid in silver imbased, and who shall beare the losse of it, and who not. *Quare.* And see Title Monies, and Embasement of them, per tot.

*Emblements.*

**B**aron and Feme Joyntenants, the Baron sowes the Land with Corn and dies, whether the Feme or the Executors of the Husband shall have the Corne. *Quare.* 8. Aff. pl. 21. Br. Emblements 15. 8. F. 3. 54. Dyer. fo. 316. pl. 2. Cooke upon Littleton, fo. 55. b.

Entry



## Entry lawfull.

**A**N Infant assigns Dower to his mother, more than the third part, whether he may enter into the dower at his full age or not, or whether he is put to his Writ of Admeasurement of Dower or not. *Quere.* H. 7. 29. Br. Entre congeable, 44. and Admeasurement, &c. 4.

**A** Man grants a Seigniorie for life, the Tenancy escheates, a stranger enters and dies seized, Tenant for life dies, whether the entry of the lord be taken away, or not. *Quere.* Railway, *Casus inerti temporis*, fo. 114.

**A** Tenant for life, the remainder for life, the remainder in fee, Tenant for life makes a Feoffment in Fee, whether he in the remainder for life may enter for the forfeiture or not. *Quere.*  
**A** Title forfeiture of Lands.

Enfran-

## Enfranchisement.

**A** Nise marries a Freeman, whether by this she be enfranchised for ever, or for life onely. *Quere.* And if the Lord marries his Nise, whether this be an Infranchisement for ever or not. *Quere.* Coake upon Littleton, fo. 123. a. & fo. 136. b. & 137. b. F. N. B. 78. b. 30. E. 1. Title Villein 46. 33. E. 3. *ibid.* 21. Doct. & Stud. fo. 140. a. 18. E. 2. *ibi.* 30. 46. E. 3. 6. 4. E. 4. 25. 1. H. 4. 6. 13. E. 1. Villen. 36. 18. Aff. 10. Mirror 10. 2. Sect. 18.

*Error.*

**A** Man recovers by Judgement erroneous, and dies without Heire, what remedy. *Quere.* 9. H. 6. 46. Br. Error. 9.

Error brought in the Kings Bench upon a Judgement given in an Assize one of the Plaintiffs in the Writ of Error

Error, dies pending the Writ, and notwithstanding Judgement was reversed, upon which the Recoverers in the first Action brought Error in the Kings Bench, and whether this Error lyes upon a Judgement given in the same Court or not. *Quere.* 2. R. 3. 1. a. and 20. b. 7. H. 6. 28. Dyer. fo. 196. pl. 39. Br. Error 68. 15. H. 4. 7. Br. Error 81. 4. E. 4. 41. Br. Error. 158. Dyer. fo. 159. pl. 35.

Whether a Writ of Error lyes in an *Ejectione firme*, before Judgement given upon the Writ of enquiry, or not. *Quere.* See my Reports, p. 88. pl. 142.

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*Escape.*

If a man who is in Execution be let at large by Commandment of the King, Treasurer, or Chancellor or by License of the Chiefe Justice, whether this be an Escape or not. *Quere.* 4. & 5. P. & M. Dyer fo. 162. pl. 10. 10. of the Queene Dyer fo. 275. pl. 46.

46. 12. & 13. of the Queene Dyer. fo. 279. pl. 24. Keilway, fo. 214. 2. and many other Bookes. See Br. Escape.

## Escheate.

**A** Tenant is disseised, and dies without Heire, whether the Lord may have a Writ of Escheate or not, because that the Tenant died not seized. *Quere.* Or whether he may enter or not. *Quere.* 7. H. 4. 8. Br. Escheate, 4. 7. H. 4. 17. Br. Escheate 5. 14. H. 6. 29. Br. Escheate 10. 37. H. 6. 1. Br. Escheate 11. 6. H. 7. 9. Br. Escheate 16. & 22. 32. H. 6. 27. Br. Escheate 26. F. N. B. 144. C. Keilway, fo. 114. 4. See the 3. Rep. fo. 2. & 3.

## Estates.

**A** Man recovers a Rent by a Writ of Entry against Tenant in taile of a Rent, which had not being before the Grant made in taile, whether the Recoveror hath a Fee simple

imple or not. *Quare.* 15. E. 4. 6. &  
See 37. H. 6. 36. & Cam. 557. a. See  
Little Kents 2.

*Estoppel.*

**A** Man makes a writing by Du-  
ressle or Manasse, and after he  
being at large, a defeasance is made  
by Deed, indented betwixt the Ob-  
ligor and the Obligee, whether this  
shall estoppe the Obligor to say that  
it was made by Duresse, &c. or not.  
*Quare.* 35. H. 6. 18. Br. Defeasance 17.  
and Estoppel 21. And the Question is  
no other, but whether the recitall of  
the obligation by the Deed indented  
of defeasance, shall be an Estoppel  
or not, and for this, see 9. H. 6. 8. 9.  
Br. Estoppel, 5 35. H. 6. 33. Br. Estoppel  
46. E. 3. 12. & 13. Br. Estoppel 43.  
9. E. 3. 14. 15. Br. Estoppel 49. 18. Aff.  
3. Br. Estoppel 127. 9. H. 7. 2. 21.  
4. 52. 53. Br. Estoppel, 173. See Cooke  
upon Littleton, fr. 352. b.

*Execu-*

## Executors.

**W**Hether Executors shall have the Glasse of windowes or not. *Quere.* 21. H. 7. 26. Br. Chattels &c. 7.

A Man Covenants for him, not naming his Executors, whether this shall binde his Executors or not. *Quere.* 32. H. 6. 32. Br. Covenant 28. 10. H. 7. 18. Br. Covenant 50. See Dyer. fo. 14. pl. 69. fo. 114. pl. 60. & fo. 322. pl. 25. See Cooke upon Littleton, fo. 209. a.

Whether he which is barred in Debt against an Executor upon a fully administred found against him, shall have a new Writ of Debt upon Assets come after or not. *Quere.* 4. H. 6. 4. Br. Debt, 106. & Executors 85. 19. H. 6. 36. 37. Br. Executors 70. 33. H. 6. 23. & 24. Br. Executors 18. 34. H. 6. 22. & 23. Br. Executors 22. See the 8. Rep. fo. 134. 1. b.

A man makes B. and C. his Executors, proviso that B. shall not administer, whether this proviso be good or not. *Quere.* 19. H. 8. 3. Br. Executor 2. H. 6. 67. Br. Executor. 9. Dyer. fo. 3. 7. 32. H. 8. Br. Executor 155.

The goods of the Testator are taken out of the possession of the Executors, whether they ought to joyn or sever in Action. *Quere.* 42. E. 3. 26. Br. Executors 31. 3. H. 7. 15. 6. H. 7. 6. Br. Executors 170. 24. E. 3. 35. Br. Executors. 84.

An Executor grants *omnia bona et c.* *Quere.* See *Single Grants.* 1.

Whether Executors shall be charged as Executors in Detinue brought against them upon a baylement made to their Testator or not. *Quere.* Keil-  
9. fo. 118. pl. 62. 3. H. 6. 35. Br. Executors 10. 41. E. 3. 30. 31. Br. Executors 8. 39. E. 3. 5. Br. Executors 92. See the  
9. Rep. fo. 94.

Admi-



Administration is committed to an Executor *de son tort*, whether he shall be charged as Executor, or as Administrator. *Quere. Keilway*, 127. pl. 91. 9. E. 4. 33. 47. Br. Executors 90.

Whether Debt lyes against an Executor of an Administrator, or not. *Quere.* 32. H. 8. Dyer. fo. 147. pl. 12. 34. H. 8. 14. Br. Administration, 7. 24. E. 3. 54. Br. Executors 83. See 1 & 2. P. & M. Dyer. fo. 112. pl. 51. & 4. & 5. P. & M. Dyer. fo. 160. pl. 42. 1. & 2. of the Queene Dyer. fo. 174. pl. 21.

Whether the Executors, of the Heire shall be charged in Debt upon an Obligation made by the Ancestor or not. *Quere.* See Title Heire 1.

Whether the Executor of a Philizer shall have the profits of the Writs which are to be subscribed with his name, or his Successor. *Quere.* See my Reports pa. 90. pl. 147.

**W**Hether unity of possession shall extinguish a way or passage or not. *Quere.* 3. H. 6. 31. Br. Chymis. 13. 11. H. 4. 5. Br. Extinguishment &c. 11. 21. E. 3. 2. Br. Extinguishment 15. See 11. H. 7. 23. Br. Extinguishment 60. Hobarts Reports, pa. 171, pl. 170. Dyer, fo. 295. pl. 19.

A man Obligor marries with the Obligee, and after they are divorced, whether the Obligation be revived or not. *Quere.* 26. H. 8. 7. Br. Coverture, &c. 82. and Extinguishment 1. Dyer, fo. 13. a. 11. H. 7. 4. b. Br. Deraignement & Divorce 1. & 18. Hobarts Reports 14. 14. pl. 19. 8. Rep. fo. 136. a. Cooke upon Littleton, fo. 264. 6. Dyer, fo. 140. a. Pl. Com. fo. 184. Keilway, fo. 122. b. 11. H. 7. 23. See Br. Assess by Discent. 1.

Land of B. out of which Rent is issuing, is given to another by Act of Parliament, whether the Rent be by this extinguished or not. *Quere.* 21.

L

H. 7.

H. 7. 3. Br. Parliamēt, &c. 28.

A Feme sole makes a Lease for yeares, the Lessee commits waste, and after the Lessor and the Lessee intermarry, and after are divorced, whether the action of waste be revived againe or not. *Quere.* Keilway, fol. 122. pl. 75. See *supra*, pl. 2.

Where a Condition shall be extinguished, and where onely suspended. See *Title Conditions* 9.

*Feoffements of Lands.*

A Feoffment made by one joyn-tenant to his Compaignon, shall inure by way of confirmation by *Newton.* *Quere.* 22. H. 6. 42. 43. Br. *Confirmation* 11. See Br. *Feoffements*, &c. ult.

A man makes a Feoffement of the Mannour of D. in D. cum pertinenciis, whether the Mannour of D. extending into D. and S. or nothing but that which



Tenant for life, the reversion to an Idiot, an Uncle Heire apparent to the Idiot, leavies a Fine and dies. Tenant for life dies, the Idiot dies, whether the Issue of the Uncle who leavied the Fine, shall be barred by it, or not, *Quere.* See my Reports, pl. 94. p. 164. & p. 146. p. 216.

Forfeiture of Lands, and Goods, and  
Officers.

Whether an Attachment in a Court Baron be forfeited by non appearance of the party or not.

*Quere.* 28. H. 6. 9. Br. Attachment, &c. 2. 34. H. 6. 49. Br. Attachment, &c. 19.

Whether a Gardein of a Prison shall forfeit his Office by an Escape in the night or not. *Quere.* 9. E. 4. 26. Br. Forfeiture, &c. 34.

Tenant for life, the remainder for life the remainder in Fee. Tenant for life makes a Feoffment in Fee, whether he in the remainder for life

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may enter for the forfeiture or not.

*Quere.* Cooke upon Littleton, fo. 252. a. 1.  
Dyer, fo. 329. pl. 44. 29. Aff. pl. 64. 49.  
6. 45. & 50. Aff. See Littleton, sect. 416.  
1. Rep. fo. 76. a. b.

*Gardian in Socage.*

**T**ENANT in Socage devises by his will, the custodie of his Heire apparent within age to B. whether this shall barre the Gardian in Socage or not. *Quere.* Keilway fol. 186.

*Grants of Common persons.*

**A**N Executor grants *omnia bona & catalla sua*, whether this shall passe the goods of the Testator or not. *Quere.* 10. E. 4. 1. Br. Grants 96. 46. E. 3. 18. Br. Grants 21. 24. E. 3. 35. In Executors 84. See my Reports, p. 205.

L 3

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## Grants of the King.

An Abbot hath an Advowson upon  
 appropriate, which hath a Vicarage  
 endowed, and grants the Church and  
 Advowson, whether by this the Ad-  
 vovson of the Vicarage, shall passe  
 or not. *Quere.* 16. E. 3. Br. Judgement  
 138. See 40. E. 3. 28. Br. Jurisdiction 5.  
 and *Juris utrum* 2.

A man grants *omnia bona & castella* his,  
 whether by this an Obligation shall  
 passe or not. *Quere.* 25. H. 8. pl. 30.  
 5. pl. 3. 36. 37. H. 8. fo. 59. pl. 15. 21.  
 H. 6. fo. 30. 8. Rep. for 33. a. b. 4. E. 6.  
 Br. Grants 51. 39. H. 6. 35. Br. Grants  
 62. 4. H. 7. 10. Br. Grants 84.

under the name of the King.

## Grants of the King.

The King grants a Mannour  
 to a knight, whether by this the  
 Mannour shall be a Corporation  
 or not, and *Quere*, if it were with-  
 out rendring Rent. 21. E. 4. 55. 56.  
 Br. Corporations, &c. 65. 2. H. 7. 13. Br.  
 Patents 44. 7. E. 4. 30. Br. Patents 62. 7.

E. 4.

E. 4. 1  
 pl. 70.

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E. 4. 14. Br. Pateents 85. Dy. r. fo. 100.  
pl. 70.

The King grants an Escheate *cum acciderit*, whether the Grant be good or not. *Quere.* 1. & 2. P. & M. Dyer. fo. 108, pl. 30.

The King grants a Copy-ho'd for life generally, whether this destroyes the Copy hold, or not. *Quere.* See my Keports, p. 226, pl. 246.

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Heire.

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**V**Whether the Heire of the Heire, or the Executors of the Heire, shall be charged in Debt upon an Obligation made by the Ancestor or not. *Quere.* Pl. Com. fr. 441. a. 22. of the Queene Dyer, fo. 388. pl. 46.

L 4

Incertaincy.

*Incertainly.*

**A** Man Distraines by two Horses, the one worth 10 l. the other 40 s. and avowes the one for one Rent day, the other for another, not making mention which for the one, nor which for the other, and the one is found for him, the other against him, of which horse he shall have a retourne. *Quere.* 2. H. 6. fo. 3. a. See 2. H. 6. 17. Br. Retourne de avers 1.

*Instance and Instant.*

**A** Copie-holder for life Heriotable, the Lord grants the Scigniorie for 99. yeares, if the Tenant should live so long, the Tenant dies, whether the Grantee for 99. yeares shall have the Heriot by force of this instant any title, or not. *Quere.* See my Reports, pa. 23. pl. 52.

Joynder

*Joinder in Action.*

The Goods of the Testator are taken out of the possession of the Executors, whether they ought to joine or sever in action. *Quere.* 42. E. 3. 26. Br. Executors 31. 2. H. 7. 15. 6. H. 7. 6. Br. Executors 170.

A promise is made to a Baron of a Feme Executrix, in that Right as Executrix, whether they may joine in action or not. *Quere.* See my Reports, pa. 72. pl. 110.

*Joyn tenants, &c.*

It is enacted by Parliament, That all Estates made to I. N. shall be void; an Estate is made to I. N. and his wife, whether this shall be void the wife surviving or not. *Quere.* 5. H. 7. 30. Br. Joyn tenants, &c. 67.

Two Joyntenants for life, the one makes a Lease for yeares, to commence after his death, and dies, whether this shall binde the Survivor or not. *Quere. Pl. Com. fo. 263. b. Cooke upon Littleton, fo. 184. b. 185. a Littleton, sect. 289. Cooke upon Littleton, fo. 186. a. b. See Dyer, fo. 69. pl. 30. and 279. pl. 7. and 187. pl. 5.*

Two Joyntenants, the one grants a Rent to his compagnion in Fee, whether the Grant be good or not. *Quere. Keilway, fo. 728. pl. 95.*

A man possessed of a tearme for yeares, devised by his Testament, the terme to his two Sons equally, whether they be Joyntenants, or Tenants in Common. *Quere. 28. H. 8. Dyer, fo. 25. pl. 158. See Ratliffs Case, 3. Rep. fo. 39. b.*

An Obligation of 200 l. is made to two solvend. e. s. sc. the one hundred pounds to one of them, and the other hundred pounds to the other, the one of the Obligees dies, and his Executors

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ter sue for the one hundred pounds,  
whether the intier 200 £. accrues to  
the Survivor or not. *Quere.* 18. of  
the *Queene Dyer*, fo. 347. pl. 20. See fo.

*Justification.*

**G**Rantee of a Rent Charge in Fee,  
disfraines for Arrearages, and  
then grants it over whether he ought  
to avow or justify. *Quere.* my Re-  
ports, p. 103. pl. 178.

King and Queene

**T**He King grants Land to the  
Queene in Fee, whether his be  
a good Grant or not *Quere.* the Book  
of *Enriques* 27. 98. Pl. Com. fo. 296. *Sta-*  
*mande Case.* See the Epistle to the  
6 Rep. 3. H. 7. cap. 14. ob. 49. E. 40. *Br.*  
*Title novatary.* See 34. H. 6. 34. Pl.  
Com. fo. 245. 247. 234. 35. H. 6. 38.  
Ans. 17. E. 3. b. 7. H. 7. 18. E. 3. 13.  
4. Rep. *Clarkes Case* 4. Rep. *Vernons Case*,  
8 of

8. of the Queene Dyer, fo. 128. 4. Rep.  
3. 6. (against Br. 6. E. 6. Dower 69.)  
23. E. 3. 22. 1. E. 3. 4. 9. E. 3. 33.

The Queene an Infant makes a Fe-  
offement in Fee, whether this be  
good or not. *Quare.* Cooke upon Lin-  
sleton, fo. 3. a. 133. a. b. 131. a. 127. a.  
and 31. b. 26. *Aff.* pl. 54. 3. H. 6. 55.  
11. H. 6. 32. *Pl. Com.* fo. 203. & 221. P.  
N. B. fo. 43. 15. E. 4. 16. 38. E. 3. 2.  
Dyer, fo. 203. 27. *Aff.* pl. 4. 5. *Rep.* fo.  
27. 18. E. 4. 10. 21. E. 4. 13. 8. *Rep.* 179.  
6. *Rep.* 74. 27. H. 8. 1. 17. E. 3. 17.  
Stamfords Pleas of the Crowne, 61.  
3. H. 7. 14. 21. H. 7. 8. 5. *Rep.* fo. 56.  
a. 9. E. 3. 33. 3. H. 7. 14. b.

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*Lachesse.*

If the King hath a presentation in  
any other Right then in the Right of  
the Crowne, whether Laps shall in-  
curre against him, as against any other  
person or not. *Quare.* Register, fo. 31.  
a. Br. presentments at Esghises 156.

Leases.

## Leases.

A man covenants that another shall have his Land for twenty yeares, whether this amounts to a Lease or not. *Quere.* 21. H. 7. 37. Br. Covenant, 26. and Lease 21. 37. H. 8. & 1. E. 6. Br. Lease 60. See Dyer, fo. 372. b. pl. 11. & fo. 150. pl. 83. See Hobarts Reports, pa. 48. b. 49. a.

A man makes a Lease for yeares rendring Rent to himselfe during the Tearme, and dies. whether his Heire shall have debt for the Rent arere after or not. *Quere.* See Title Reservation 1.

A Bishop makes a Lease to two for yeares rendring Rent, after makes a new Lease with confirmation of the Deane and Chapter to one of them, and dies. whether by his death the first Lease be wholly void or not. *Quere.* 32. H. 8. Dyer, fo. 46. pl. 9.

A man



A man makes a Lease for years upon condition that if the Lessee alienens the terme, that then it should be lawfull to the Lessor, &c to enter the Lessee alienens the terme, the Lessor before entry makes a Lease for years, whether the Lease be good or not. *Quere.* 28. H. 8. Dyer, fo. 6. 1. & fo. 7. pl. 6. Pl. Com. fo. 131. 132. 133. &c.

Tenant in taile makes a Lease for yeares to commence after his death, rendring Rent, and diess the Issue accepts the Rent, whether this shall barre his entry or not. *Quere.* Dyer, fo. 279. pl. 7. fo. 69. pl. 130. & fo. 246. pl. 69. Cooke upon Littleton, fo. 4. a. Pl. Com. f. 430 See Dyer, fo. 357. pl. 49. the like case.

### Licence.

**A** Feme sole Licenses a man to hunt in her Warren, and after he takes husband, whether by the intermarriage, the Licence be determined or

years or not. *Quare.* 22. H. 6. 52. Br. Licen-  
 6.

A man licenses another to hunt  
 and kill a Buck in his Parke, whether  
 by force of this License he may take  
 it away with him or not. *Quare.* 18. E.  
 4. 14. Br. Licenses, &c. 12. and 6. And  
*Quare.* whether he may kill it by his  
 Servant or not. See 23 H. 8. Br. Pa-  
 tents 76. & 12. H. 7. 25. Br. Property 41.  
 for the first case, and See 21. H. 7. 13.  
 Br. Trespasse, 207. 13. H. 7. 10. Br. Tres-  
 passe 431.

*Livery and Seisin.*

**A** Man makes a Feoffement and a  
 Letter of Attorney to make li-  
 very absolutely, and he makes livery  
 upon condition, whether this livery  
 be void or not. *Quare.* 12. Aff. pl. 24.  
 Br. Disseisor &c. 33. and Feoffements 25.  
 Cooke upon Littleton, fo. 250. a. b. Per-  
 kins, fo. 39. pl. 192. Cooke upon Little-  
 ton, fo. 52. a. b. 26. Aff. pl. 39. Br. Fe-  
 offements 27.

A man infeoffes two, and makes a Letter of Attorney to one of them to make Livery to the other in the name of both, and he doth it, whether he that makes the livery doth take any thing by it or not. *Quere.* 3. H. 6. 43. Br. Attorney 5. Perkins, fo. 41. v.

A man seized of a House and Close makes a Lease for years of the House; and after makes a Feoffment of the House and Close, and delivers Seisin in the House (the Wife and Infants of the Termor being in the House) in the name of all, agreed that the House shall not passe, but whether the Close being within the view, shall passe or not. *Quere.* 28. H. 8. Dyer, fo. 18. pl. 107. 108.

A Letter of Attorney is made to three to make livery, *conjunctim et divisim*, two make livery, the third being present, not doing or saying any thing, whether this be a good livery or not. *Quere.* 38. H. 8. Dyer, fo. 62. pl. 34.

Lessee

Lessee for yeares makes a Feoffement, and a Letter of Attorney to make Livery, and after the Attorney delivers Seisin, the Lessor being present upon the Land, not contradicting, whether the Land passes by this Feoffement or not. *Quere. Dyer, fo. 362. pl. 20. & 354. pl. 35.*

## Maintenance.

**A** Man buyes a Title thus. That if he can recover it, he shall pay two hundred pounds, otherwise nothing, whether this be maintenance punishable at the Common-Law or not. *Quere. Hobarts Reports, pa. 157. pl. 141.*

M

Monies

Lessee

*Monies, and embasement of them.*

**A** Man bound to pay money by specialty, tenders the money at the day of payment, which is refused, and after the money is debased, who shall beare the losse of it *Quere.* 7. E. 6. Dyer, fo. 83. pl. 76. See before in Dyer, pl. 69. 70. 73. 74. 75. and Davis Reports, fo. 27, 28.

A man bequeatheth by his will money to another, after base money is established, whether the Legacy may be paid in this base money or not. *Quere.* Davis Reports, fo. 27. b.

A man hath a thousand pound pure silver in marriage with his wife, who after are divorced *causa præ-contractus*. Or a man recovers by erroneous judgement an hundred pound in debt, and hath execution in pure silver, after the judgement is reversed, if base money be established in the meane time; whether restitution in these

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cases may be of base money or not.  
*Quere. Davis Reports, fo. 27. b. 28. a.*

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*Mortmaine.*

IF a Rent be granted to an Abbot  
and his Successors for eighty yeers;  
whether this be *Mortmaine* or not.  
*Quere. 4. H. 6. 9. Br. Mortmaine 15. Pl.  
Com. fo. 87. a.*

Whether the alienation of one spi-  
rituall or religious man to another  
spirituall man, be *Mortmaine* or not.  
*Quere. Keilway, fo. III. pl. 37. 21. E.  
3. 5. Br. Mortmaine 12. 11. H. 4. 88.  
Br. Mortmaine 18. 16. Ass. pl. 1. Br. Mort-  
maine 19.*

Whether a Lord that is disseised at  
the time of the alienation in *Mort-  
maine*, shall have a yeare after his en-  
try, for to enter for *Mortmaine*, or not.  
*Quere. Keilway, fo. III. pl. 83.*

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Non

## Non est factum.

**T**wo are bound in an Obligation, and the Seale of one of them is broken off, in an action brought against the other, whether he may pleade *Non est factum*, or not. *Quere.* 3. H. 7, 15. Br. *Non est factum* 21. See my Reports, p. 125. pl. 205.

## Obligations.

**A** Man was bound to I. N. that he should not use his Art in D. by two yeares, and by *Hull* this Obligation is against Law. *Quere* of this, because that the restriction goes only to D. which is not a totall restriction. 2. H. 5. 5. Br. *Fritz* 93. and *Obligation* 85. See the 8. Rep. fo. 125. b. and the 11. Rep. fo. 53. b. and see my Reports, p. 77. pl. 121. p. 191. pl. 238.

Two are bound in a Bond, and the Seale of one is broken off, whether  
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this shall avoid the whole deed, so that in an action brought against the other, he may pleade *non est factum*, or not. *Quere.* 3. H. 7. 15. Br. *Non est factum*, 21. See my Reports *pa.* 125. *pl.* 205.

A man is bound to a Baron and Feme, the Baron makes the wife Executrix and dies, whether the wife may bring an action as Executrix to the Baron, or whether she ought to bring it, *Nomine proprio*, as Survivor, or not. *Quere.* 4. H. 6. 5. Br. *Obligati-*  
*on* 35.

*Occupans & Occupanti  
Conceditur.*

A Lease is made to one, his Executors and assigns *pur auter vie*, the Lessee makes a Lease for yeares, rendring Rent to him, his Executors and Assignes, and dies. *Quere.* Whether the Lessee for yeares shall be an Occupant, and the Rent extinct; or whether that the Freehold shall re-

vert to the first Lessor, and the term be in esse 15. and 16. of the Quene Dyer, fo. 328. pl. 10. and see 38. H. 6. 4. And *Quere* in this case whether the Executor shall be a special Occupant, or not.

Outlawry.

**I**N Debt brought against an Executor, he pleads *Outlawry* in the Testator, whether this be a good plea or not. *Quere.* 8. E. 4. 6. Br. *Utlagory*, 49. 3. H. 6. 17. and 32. 32. H. 6. 27.

Parcell and not Parcell.

**W**Hether a hundred may be parcell of a Manour or not. *Quere.* 27. H. 6. 2. Br. *Parcel*, &c. 2. and Br. *Scire facias*, 7. *Keilway*, fo. 151. pl. 51.

Whether an Annuity may be parcell of a Priory or not. *Quere.* 22. E. 4. 44. Br. *Parcell*, &c. 26.

Possibility.

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## Possibility.

**A**. By Indenture infeoffes **B.** of a black acre, to the use of **A.** for life, the remainder in taile to **C.** the remainder in fee to **D.** with a proviso, if **E.** dies without issue, that **A.** at any time by Indenture sealed; &c. in presence of foure witnesses, may alter, &c any use, &c. **A.** by Indenture renounces Surrenders, Releases, &c to **B.** **C.** and **D.** the said Power. Condition, Authority, &c. **E.** dies without issue. **A.** by Indenture in presence of 4. Revokes the first uses and limits new, whether this release of a future possibility, or power of revocation shall barne it or not. *Quere. 1. Rep. Albanies Case. Coke upon Littleton, fo. 265. b.*

## Presentments to Churches.

**A** Presentment is divolved to a Bishop by Laps, who is deprived, whether the Metropolitan or the King shall present. *Quere.* 7. E. 6. *Dyer, fo. 87. pl. 103.*

## Prohibition.

**A** Man devises that his Executors shall sell his Land, and of the Monies shall give such portions to his Daughters, the Legatees sue in Court Christian for their portions, whether a Prohibition lyes or not. *Quere.* 4. and 5. P. and *M. Dyer, fo. 151. pl. 5. Trin. 9. of the Queene Dyer, fo. 264. pl. 41. See Hobarts Reports, pa. 371. pl. 343.*

*Ration-*

*Rationabile parte bonorum.*

**W**Hether it be *Communis lex Anglie*, for women and Infants to have their reasonable part of the Goods of the Defuncte or not. *Quare.* See Br. *Rationabile parte bonorum per totum*, and see F. N. B. the Writ of *Rationabile parte bonorum*.

*Recognizance*

**W**Hether the Commons House of Parliament may take a Recognizance or not. *Quare.* 61. H. 7. 20. 17. 18. *Recognizance* 8.

*Record, and matter of that.*

**A** Man brought Debt upon a Recovery in a Court Barren, whether the Defendant may pleade *Nul tiel Recorde*, or whether he ought to say, *Nul tiel Recovery* or not. *Quare.* 34. H. 6.

H. 6. 49. Br. Court Baron, &c. 1. 34. H. 6. 42. Br. Court Baron 14. 9. E. 4. 14. Br. Court Baron 16. 28. Aff. pl. 14. Br. Record, &c. 66. F. N. B. fo. 71. Br. Record &c. 70. See my Reports, pag. 137. 10. 35.

## Relation.

**T**He Father is disseised, the Sonne makes a Release, and delivers it as an Escroule, to be delivered over to the Disseisor at the death of the Father, the Father dies, the Deed is bayled to the Disseisor; whether this second Delivery shall relate to the first, and so avoid the Deed or not. Quere. 35. H. 8. Dyer, fo. 57. pl. 23. See the 3. Rep. fo. 35. b. See Title Countermand 1.

Releases.

Releaser.

**W**Hether a Release of a right up-  
on a condition subsequent be  
good or not. *Quere.* See Title Con-  
ditions.

Whether a Release of all Actions  
reall, be a good Barre in an Annuity  
or not. *Quere.* Cooke upon Littleton,  
fo. 374. b. Dyer, fo. 146. pl. 40. 19. H. 6.  
37. 2. H. 4. 13. Br. Annuity, 13. 6. 43.  
L. 5. E. 4. 40. Br. Annuity 34. 21. E. 4.  
83. Br. Annuity 39. 11. H. 7. 20. Br. An-  
nuity 54. Cooke upon Littleton, fo. 2. a.  
and 285. a.

Feme Disceiſoreſſe takes husband,  
the Diſſeſſee releaſes to the Baron  
and his Heires, whether this ſhall in-  
ure to him or to his wife, or not. *Que-  
re.* 14. H. 8. 4. 21. H. 6. 41. Kellway,  
fo. 129. a.

**A**. By Indenture inſcoſſes B. of  
black Acre, to the uſe of A. for  
life,



life, the remainder in taile to C. the remainder in Fee to D. with a proviso, if E. dies without Issue, that A. at any time by Indenture sealed, &c. in presence of foure Witnesses, may alter, &c. any use &c. A. by Indenture renounces Surrenders, Releases, &c. to B, C. and D. the said power, condition, authority, &c. E. dies without Issue, A. by Indenture in presence of foure Witnesses, revokes the first uses, and limits new, whether this release of a future possibility, or power of revocation, shall barre it or not. *Quere*, 1. Rep. *Albaines Case*. Cooke upon *Lilington*, fo. 265. b.

Two men are bound joyntly and severally to a third, who sues the Bond against both, and after appearance enters a Retraxit against one of them, whether this shall amount to a Release, so that it shall discharge the other or not. *Quere*. See my Reports *pa. 95. pl. 165.*

Where one Coparcener of a Rent marries the Ter-tenant, and the other releases

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releases to the husband and wife, how it shall inure. *Quere.* Cooke upon Littleton, fo. 273. b.

Where the Feme Mesne and the Tenant entermarry, and the Lord Paramount releases to the husband and wife, how it shall inure. *Quere.* Cooke upon Littleton, fo. 280. a.

Remainder.

**W**Hether there may be a Remainder of a Rent *de novo*, or not. *Quere.* See Title Rents 2.

Remitter.

**T**ENANT in Taile infeofes his Issue inheritable to the Taile within age, who at full age makes a Lease for yeares, Tenant in Taile dies, whether the Lease be avoided by the Remittor or not. *Quere.* Cooke upon Littleton, fo. 349. a. 33. H. 8. Dyer, fo. 51. b.

Rents.

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## Rents.

**W**Hether a Rent granted not of customary Lands, as out of Lands devisable, Gavelkind or Borough English, or the like, shall be of the nature of the Land, or not. *Quare.* 22. *Aff.* pl. 78. *Br. Customs* 34. and *Rents* 13. 26. *H.* 8. 4. *Br. Customs* 1. 21. *H.* 6. 10 and 11. *Br. Customs* 24. 4. *E.* 3. 32. *Br. Customs* 58. 14. *H.* 8. 7. *Br. Customs* 65. and *Br. Rents* 6. and 70. 26. *H.* 8. *Dyer.* pl. 1. and fo. 140. pl. 38. and 153. pl. 11. and 192. pl. 23. See *Cooke* upon *Littleton*, fo. 111. a. for devile of a Rent see now the Statute.

Whether there may be a remainder of a Rent *de novo*, or not. *Quare.* 7. *H.* 4. 4. *Br. Done & Remainder* 8. 15. *E.* 4. 9. *Br. Done & Remainder*, 54. 8. *H.* 4. 19. *Br. Done & Remainder*, 58. *Pl. Com.* fo. 39. a. *Cooke* upon *Littleton*, fo. 198. a. 2. *Rep.* fol. 70. 76. and 78. 3. *E.* 3. See *Cooke* upon *Littleton*, before, 14. *H.* 7. 2. *Br. Surrender* 16. And see the case immediately following. A

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A man recovers a Rent by Writ of Entry against Tenant in Taile of a Rent which had not being before the Grant made in Taile, whether the Recoveror shall have a Fee simple or not. *Quare.* 15. E. 4. 6. and 8. See 37. H. 6. 36 and Pl. Com. fo. 557. a.

Land of B. out of which a Rent is issuing, is given to another by Act of Parliament; whether the Rent be by this extinguished or not. *Quare.* 21. H. 7. 3. Br. Parliament 28.

The Lord receives his Rent upon Christmas day before dinner, and dies after dinner, and the Lord holds of the King, whether the King shall have the Rents of the Tenants arreare or not. *Quare.* 44. E. 3. 3. Br. Presentments to Churches 4. and Br. Rents 2.

A man makes a Lease for yeares rendering Rent to himselfe during the terme, and dies, whether his Heire shall have debt for the Rent arreare after, or not. *Quare.* See Title reservations.

Requests.

## Requests.

**A** is bound to B. to deliver to him two hundred weight of Hops, and B. to chuse them out of twenty foure bags, &c. whether B. is bound to request A. to shew the bags for him to make his Election or not. *Quare.* See my Reports, pa. 74. pl. 113.

## Remitter.

**T**enant in Taile infeofes his Son and Heire inheritable to the Taile, within age at the time of the Feoffement, who at full age makes a Lease for yeares by Deed Indented, or Deed Poll of the Land, and then Tenant in Taile dies, so that he is remitted, whether he shall avoid the Lease or not. *Quare.* Cooke upon Littleton, fo. 349. a. 33. H. 8. Dyer. fo. 51. b. See Littleton, Sect. 289.

A husband discontinues the Land

of

of his wife, and goeth beyond Sea and the Discontinuee lets the same Land to the wife for terme of her life, and delivers seisin to her, and after the husband comes back, and dis-agrees to the Lease and Livery of Seisin made to his wife in his absence; whether this shall ouste the wife of her Remitter, or not. *Quare, Littleton, Sect. 677. See Cooke thereupon.*

A Husband discontinues the Lands of his wife, and the discontinuee is disseised, by the coven and consent of the husband and wife, and after the Disseisor letteth the same Lands to the husband and wife for life, whether in this case the wife shall be remitted or not. *Quare, Littleton, Sect. 678. See Cooke thereupon, fo. 357. b.*

Two Joyntenants in Fee, the one of full age, the other within age, are disseised, and the Disseisor dies seised, and his Issue enters, the Joyntenant of full age dies; whether the Infant Surviving may enter into the whole or not. *Quare, See Littleton, Sect. 396. and Cooke thereupon, fo. 364. b.*

## Reservations.

**A** Man makes a Lease for yeares, rendering Rent to himselfe fe during the terme, and dies; whether his Heire shall have Debt for Rent arrears after, or not. *Quere.* 27. H. 8. 19. Perkins 697. 698. 699. 22 H. 7. fo. 88. b. Keilway, 5. Rep. fo. 111. a. Malbories Case, Pl. Com. fo. 171. a. 21. H. 7. 25. 30. H. 8. Dyer, fo. 45. Cooke upon Littleton, fo. 47. a. q.

Whether a condition of re entry may be reserved to the Heire, not naming the Ancestor, or not. *Quere.* for I doubt of it, upon the words of Littleton, sect. 346. and 343. See Cooke thereupon, fo. 213. and 214.

## Reserve of Beasts.

**A** Man distraines by two Horses, the one worth 10<sup>l</sup>. and the other 40<sup>l</sup>. and he avowes the one for one

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Rent day, and the other for another, not making mention which for the one, nor which for the other, and the one is found for him, the other against him. *Quare*, of which horse he shall have returne. 2. H. 6. fo. 3. See 2. H. 6. 17. *Br. Resourne & over* 1.

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*Revocation.*

**T**HE King presents his Clerks to a Benefice, and before institution presents another, whether this be a revocation of the former presentation, or not. *Quare*. See my *Rep.* p. 86.

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*Seisin.*

**A** Man who hath a Rent grants it over upon condition, the condition is broken: whether the Grantor shall have an Assize for the Rent after arreare, without a new Seisin; or not. *Quare*. M. 15. E. 3. *Br. Title Assize* 407. *Coake upon Littleton*, fo. 202. b. 15. *Ass.* 12.

A man hath issue a Sonne and a Daughter by one venter, and a Sonne by another venter, and makes a Lease for life rendering Rent and dies; whether the receipt of the Rent shall be a sufficient Seisin to make a *possession*, so that the Daughter shall inherit, or not. *Quere.* 35. *Aff. Pl. 2.* Cooke upon Littleton, fo. 15. a. 14. E. 2. Br. Seisin 43.

A man dies seized of severall acres of land in one County, his Heire enters generally in one of the Acres, whether this gives possession of the other Acres or not. *Quere.* 121. H. 7. 33. a. Cooke upon Littleton, fo. 15. a. b. See 39. *Aff. pl. 16.*

Whether a Baron of the Realm may acknowledge a Statute or not. *Quere.* See 3. E. 4. 108. 8. R. 2. process. 224. 5. E. 4. 180. a. 9. E. 3. Br. 473029 E. 3. 35. b. Dyer, fo. 360. 9. Rep. fo. 117. 10. H. 4. 15. D. 1. H. 3. 14. 27. A H. 8.

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ter takes a patent of the office of the  
custody of the said messuage; whe-  
ther the terme be surrendered or not.  
*Quere. Pasche 3. of the Queene Dyer, fo.*  
*200. pl. 82.*

## Taile.

**G**randfather & Father. and Sonne,  
Lands are given to the Grandfa-  
ther and to his Heires begotten by  
the Father. the Father dieth, the  
Grandfather dieth, whether the Son  
be in as Heire to the Grandfather be-  
gotten upon the body of his Father;  
and whether the wife of the Grandfa-  
ther in that case shall be endowed or  
not. *Quere. 12. H. 4. 2. per Horton, Coke*  
*upon Littleton, fo. 20 b.*

Lands are given to a man and his  
wife, and to one Heire of their bo-  
dies lawfully begotten, and to one  
Heire of the bodie of that Heire on-  
ly; whether this be an Estate Taile  
or not. *Quere. for Edoubt of it. 39.*  
*Aff. pl. 20. 20. H. 6. 33. 5. H. 4. 70.*

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14. H. 4. 15. Littleton, sect. 13. and Cooke thereupon, fo. 19. a. and fo. 20. a. and fo. 22. a.

A man gives Land to another, & heredi masculo de corpore suo, what Estate this is. *Quere. Fide Registrum judiciale,* fo. 6.

A man devises Land to a man, and to the Heires Males of his body, who hath Issue a Daughter, who hath Issue a Son, whether this Son be inheritable by force of this Devise, or not. *Quere. See Littleton, sect. 719. 1. H. 6. 24. 11. H. 6. 13. 14. 28. H. 6. Title Devise 18. Statbam. Pl. Com. fo. 414. b. 20. H. 6. 43. 37. H. 8. Br. Title Done & Remainder 61. Title Nefine, 1. & 40. Perkins 506. Cooke upon Littleton, fo. 25. a. b.*

Lands are devised to one for life, the remainder to the next Heire Male of B. in taile, & hath Issue two Daughters, and each of them hath Issue a Son, and the Father and Daughters die: whether the remainder be void for the uncertainty whether the eldest

shall take it because he is worthiest or whether both of them shall take, for that they both make but one Heire. *Quere.* 11. H. 6. 13. 9. H. 6. 25. *Cooke upon Littleton, fo. 25. b.*

Land is given to the Son, and to the Heires of the body of his Father (then dead) ingendered, this is a good Taile in him, but whether his younger brother shall inherit by force of this gift, or not. *Quere.* *As. 4. Co. 5. P. 10. Dyer, fo. 156. pl. 24. 25. Cooke upon Littleton, fo. 26. b. Hill. 8. of the Queens Dyer, fo. 247. pl. 76. See 12. H. 4. 1. & 2. Br. Taile 10.*

A Rent is granted in Taile, whether the Grantee may make it an Annuity, or not; because he seemes to have an election *secundum formam doni*, to take it as a Rent Charge, or as an Annuity; and the Statute *De donis conditionalibus* sayes, that *Voluntas donatoris in eadem sua manifeste expressa de cetera observetur*; and his will is observed by making it an Annuity or a Rent Charge; for he gave him by the Grant such an impli-

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implicit power. To this it may be said, That if he might at his Election make it an Annuity, then it were no more an Intaile, but a Fee conditionall as at Common Law, and then after Issue had, he may alien, and barre the Issue, which seemeth contrary to the will of the Donor, *ideo Quære.*

Tenant in Taile makes a Lease for yeares, to commence after his death, rendering Rent, the Issue accepts the Rent; whether this shall barre his Entry or not. *Quære.* Dyer, fo. 279. a. pl. 7. fo. 69. a. pl. 30. fo. 146. a. pl. 69. Coake upon Littleton, fo. 24. a. Pl. Com. fo. 430.

Tenant in Taile makes a Lease for yeares, rendering Rent, and after release, and dies, and the Issue accepts it, whether he may distraine for the 10 more or not. *Quære.* 3134 & 14. of the Queene Dyer, f. 304. pl. 53.

Tenant



*Tenant at will and sufferance.*

**T**ENANT at will is ousted, and the Lessor disfeised, whether by this the Lease at will be determined or not. *Quere.* 38. H. 6. 17. Br. Tenant pro copie, &c. 6. 11. E. 4. 3. Br. Tenant pro copie, &c. 11.

Whether Tenant at will may determine his will, a day or two before the Feast, in which he ought to pay his Rent, and thereby be excused of the payment of it, or not. *Quere.* 20. H. 7. fo. 65. pl. 6. Keilway. See Cooke upon Littleton, fo. 55. b. letter. c.

Whether a bargaine before Inrollment, or Entry, shall be a Tenant at will, or not. *Quere.* See my Reports, p. 62. pl. 97. & p. 69. pl. 108. See Littleton, fo. 70.

Tenures

Tenures.

**T**ENANT by Knight service makes a gift in Taile, reserving Fealty and Rent; whether the Donee in Taile shall hold by Knight Service, and the other Services especially reserved, or in Socage onely. *Quere.* Cooke upon Littleton, fo. 23. a. 33. H. 8. Dyer, fo. 52. pl. 3. See Dyer, fo. 45. pl. 1.

Testaments.

**W**HETHER a Feme Covert may make a Testament without agreement of her husband, of things in action, as Obligations, and the like, due to her before the Coverture, or not. *Quere.* 4. H. 6. 31. Br. Testament, fol. 4. 39. H. 6. 27. Br. Testament 10. 12. H. 7. 22. 23. 24. Br. Testament 11. 18. E. 4. 11. Br. Testament 13. 4. E. 2. Br. Testament 21. See 4. Rep. fo. 61. a. 9. Rep. fo. 10. Dyer, fo. 35. b. pl. 24.

Time.



upon Littleton, fo. 261. b. See the 7. Rep.  
fo. 15. b.

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Tythes.

A Parson Leases parcell of his  
glebe Land for yeares, rendring  
Rent, whether the Lessee shall pay  
Tythes or not. *Quare.* 30. 11. 8. Dyn.  
fo. 43. pl. 21.

The Inhabitants of a Parish have a  
Chappell of Ease, and a Custom  
that those within such a Precinct  
ought to finde a Rope for the third  
Bell, and to repaire part of the Mo-  
ther Church, in consideration of  
which they have been freed from pay-  
ment of any Tythes to the Mother  
Church, whether this be a good Cu-  
stome or not. *Quare.* See my Reports,  
pa. 91. pl. 151.

Vest

## Vest and Devest.

**A** Mannour was given to S. by Parliament, and after a Tenant who held of it by Knights Service, died after S. was attainted of Treason, and the first Act reversed in all points, the King seized the Mannour, and granted it to his mother, whether the Patentee shall have the said Ward, or not, because it was a thing vested. *Quere.* 3. H. 7. 15. Br. Parliament 39. See 4. H. 7. 10. Br. Parliament 41. Dyer, fo. 25. pl. 163. See Keilway, fo. 125. pl. 86. 31. H. 6. 56. Br. Pre-  
sentments, C. 22.

**A** Disseisor of a Mannour suffers the Disseisor to be in possession untill a Ward falls, and after re-enters, who shall have the Ward. *Quere.* 2. H. 7. 2. Br. Garde 65. See Dyer, fo. 25. pl. 163. and the cases immediatly before.

View.

## View.

**A** *Precipe quod reddat* is brought against two, the one acknowledges the Action and the other demands the View, whether he shall have it, or not. *Quere.* 14. H. 6. 3. Br. Dilatorius 9 and View 68.

## Villeinage and Villeine.

**A** Freeman marries a Niese, whether this be an Enfranchisement for ever, or for life onely. *Quere.* The Lad marries his Niese, whether this be an Enfranchisement for ever, or no. *Quere.* See Title Enfranchisement.

## Voucher.

**T**He Tenant vouchers A who is returned dead, upon the Writ of Summons; whether he may now vouch in another Line, or not. *Quere.*

41. E. 3. 28. Br. *Counterplea de Voucher*  
56. and Br. *Voucher* 18. 43. E. 3. 3. Br.  
*Voucher* 21.

**A** Man in consideration of marri-  
age, covenants, That immedi-  
ately after his death, his Land shall  
inure and remaine to his Sonne, whe-  
ther this raises a use immediately to  
the Sonne, or not. *Quere.* 34. and 35.  
H. 8. Dyer, fo. 55. pl. 3. and 4. *Mich.* 1.  
44. Dyer, fo. 96. pl. 41. Dyer, fo. 162. pl.  
48. and 49. fo. 238. pl. 20. 21. fo. 166. pl.  
8. and 9. fo. 329. pl. 37. and fo. 190. pl. 18.

*Wager of Law.*

**A** Man brings Debt upon a Reco-  
very in ancient Demesne, which  
is a Court Baron; whether the De-  
fendant may wage his Law, or not.  
*Quere.* 34. fo. 42. Br. *Chancery*, &c.  
wheggager 11. and *Recon.* &c. 8. No.  
71. 25. Br. *Leygager* 105. See my *Report*,  
No. 25. pl. 35. By



By the Custome of London a man cannot wage his Law for bourding, but whether in an Action brought at Westminster he shall have his Law, or not. *Quere* See *Tut. Customes* 1.

Ward.

A Man of non-sane memory makes a Feoffment and dies, his Heire recovers by a *Dum non fuit compos mentis*, whether he shall be in Ward or not. *Quere*? 7. H. 4. 12. Br. Garde 24.

Disseise of a Mannour suffers the Disseisor to continue possession till a Wardesale, and after re-enters; who shall have the Ward. *Quere*. 2. H. 7. 2. Br. Garde, 63. See *Kellway*, fo. 111.

A Mannour was given to S. by Parliament, and after a Tenant which held of it by Knights Service died, after S. was attainted of Treason and the Act reversed by Parliament in all points, the King seized the Mannour, and

and granted it to his mother; whether the Patentee shall have the Ward, or not. *Quere.* 3. H. 7. 15. Br. Parliament, 39. See 4. H. 7. 10. Br. Parliament 41. See *Life Vest & Devest.*

Tenant in Socage devises by his will, the custody of his Heire apparent within age to B. whether this shall barre the Gardian in Socage, or not. *Quere.* *Kellway*, fo. 186. pl. 1.

A man seized in Fee before the Statute of 27. H. 8. infeoffes B. in Fee, to the use of him and his wife, and the Heires of their two bodies ingendered, and for default of such Issue, to the use of the Feoffor and his Heires in Fee, after the Statute they have Issue, the husband dies, the Issue within age; whether he shall be in Ward during the life of his mother, or not. *Quere.* 3. H. 4. P. & M. Dyn. fo. 13. pl. 6. See 28. H. 8. Dyer, fo. 7. pl. 11.

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Warranty.

**W**Hether a man may grant a Rent *de novo* out of Land for life, or &c. with warranty, because there can be no Title precedent to the Rent. *Quere.* 2 H. 4. 13. 30. H. 8. 15. 16. 42. *Temps.* E. 1. *Adm.* 16. 32. E. 1. *Voucher.* 29. 30. E. 1. *Exch.* 16. 9. E. 4. 15. E. 4. 9. 29. *Aff.* 13.

A man infeoffes another of an Acre of Land with Warranty, and dieth seized of another Acre, having issue a Sonne and a Daughter by one venturer, and a Sonne by another, the eldest Sonne entreth and dieth, the Land descendeth to the Sister; In this case the Warranty descendeth on the Sonne, and he may be vouched as Heire, and the Sister as Heire of the Land; in which case the Sonne and Heire by the Common Law having nothing by descent, the whole losse of the recovery in value lieth upon the Heire of the Land, albeit he be no

Heire to the Warranty. Then put the case that there is a Warranty Paramount, who shall deraigne that Warranty? and to whom shall the recompence in value go? *Quere.* Come upon Littleton, fol. 376. b. Pl. Com. fa. 515.

Land was devised to the Father for life, the remainder to the next Heire Male of the Father, and to the Heires Males of his body, the Devisor dies, the Father infeoffed B. with Warranty; by the Feoffement the contingent remainder is destroyed, but whether the Warranty shall binde the remainder, or not. *Quere.* 1. Rep. Archb. Case.

A Servant sels Clothes, and warrants them; whether deceit lies against him, or not. *Quere.* The sale being the sale of the Master, and the warrant the warrant of the Servant. 11. H. 4. 6. Br. Deceit, 29. and Garrit. by 61.

A man knowing a thing to be corrupt and naught, sels it, whether Deceit

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ledge, without Warranty, or not.  
*Quere.* 26. H. 6. 34. Br. Deceit, 2. 9. H.  
6. 53. Br. Garranty 93.

~~A man makes a tale for life of a~~  
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**I**F a man fix a Furnace or Fats in his *domus*, and not to the walls, or a post in the Land not to the walls, he may take it away within the Terme; but if he suffer it till the Terme be ended, the Lessor shall have it; and the taking of them by the Termer within his Terme is not waste, for the house is not impaired by it, by *Kings Mole Justice*, and *Grevil Serjeant*, *quod nullus negavit. Tamen Quere.* 21. H. 7. 26. Br. Chattels, &c. 7. See Br. Chattels, &c. II.

Tenant for yeares commits wast,  
and after surrenders to him in the  
reversion, who accepts it, excepting  
the waste, whether an Action of  
waste lies, or not. *Quere.* 19. H. 6.  
66. Br.

66. Br. Waste 86. 14. H. 8. 10, 11. Br.  
Waste 95. 23. H. 8. Br. Waste 138. 14.  
H. 6. 14. pl. 48. See Cooke upon Little-  
ton, fo. 285. a.

A man makes a Lease for life of a  
House and Land, which House was  
ruinous at the time of the Demisee  
made, the Lessee cuts downe Trees  
to repaire it, whether this be a justi-  
fiable waste, or not. *Quere.* 12. H. 8.  
1. 29. H. 8. Dyer, fo. 36. a. Cooke upon  
Littleton, fo. 53. a. letter, g. and fo. 55. b.  
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